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ABSTRACT

This report examines underlying causes of racial and ethnic tensions in the Mississippi Delta. It is based on sworn testimony from a public hearing, subpoenaed documents received by the U.S. Commission on Civil Rights, and legal research. Data are provided on: equality of economic opportunity (racial factors and economic opportunity, agriculture, and black Delta farmers); race and public education; and voting rights and political representation. Significant racial disparities exist in the socioeconomic conditions of blacks and whites. Black farmers have unequal access to technical support and financial assistance. Nearly half of the lowest ranking school districts are in the Delta. Minority students are over-represented in special education. Teacher shortages exist throughout Mississippi, particularly in the poorest districts with the most minority students. Since Mississippi adopted new admissions standards by equalizing admissions requirements at four-year institutions, fewer black students have qualified for unconditional admission. Minority political participation in Mississippi has increased substantially since passage of the Voting Rights Act. Black voter registration and voting lag behind that of white citizens. Recommendations for each of the study's findings are presented. Two appendixes describe Mississippi Delta county supervisors and black elected officials on municipal governing bodies in Mississippi. (Contains 17 tables.) (SM)

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Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

Volume VII: The Mississippi Delta Report

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February 2001

A Report of the United States Commission on Civil Rights

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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
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Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

Volume VII: The Mississippi Delta Report

Letter of Transmittal

The President
The President of the Senate
The Speaker of the House of Representatives

Sirs:

The United States Commission on Civil Rights transmits this report to you pursuant to P.L.103-419. It is the product of a three-day fact-finding hearing, sworn testimonies of numerous witnesses, subpoenaed data, and research.

The Mississippi Delta Report is the seventh volume in a series of Commission reports on *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*. The report examines underlying causes of racial and ethnic tensions in the Mississippi Delta, focusing on the areas of equality of economic opportunity, public education, and voting rights.

Our recommendations are directed to the states of Mississippi, Louisiana, and Arkansas, and the federal government. With respect to matters under federal jurisdiction, the Commission recommends that the U.S. Department of Agriculture should thoroughly investigate and resolve outstanding complaints of discriminatory treatment at local FSA offices. The agency should also work with other governmental entities to examine lending practices at area banks in rural areas to determine, document, and alleviate discriminatory lending practices, as well as institutional barriers that contribute to lengthy loan approval methods. Further, the agency should examine legislative initiatives which currently exist that contribute to farm foreclosure and prevent farmers from reducing their farm loan debt. The Commission also strongly recommends that the USDA resolve the backlog of civil rights complaints through the most expedient, equitable, and efficient mechanisms. The institutional factors that created the backlog should be investigated and eliminated.

Finally, the Commission recommends that the USDA fully act upon its February 27, 1997, commitment to ensure that its staff is adequately trained and its complaint processing procedures are adequately implemented.

The Commission further recommends that the U.S. Department of Education increase its scrutiny of educational disparities in the Delta and provide adequate avenues for parents, teachers, and other concerned parties to participate in monitoring and evaluation processes. The Department should specifically ensure that nondiscriminatory polices and procedures are followed with regard to assignments to special education classes and disciplinary actions. The Department should require all school districts to provide civil rights compliance data on these assignments and actions.

Among other recommendations, the Commission urges the Congress to increase funding for the civil rights enforcement activities for the federal agencies investigating discrimination in the Mississippi Delta, to enact legislation to increase economic development in the Delta, and amend the Census Act to allow the use of statistical sampling for apportionment purposes. We urge the executive and legislative branches of government to act upon and implement the recommendations in this report, and to move forward with policies designed to meet the changing needs of America's ethnically and racially diverse communities. The Commission hopes that this report will be a useful reference in the formulation of that strategy.

Respectfully,
For the Commissioners,

Mary Frances Berry

Mary Frances Berry
Chairperson

Acknowledgments

The hearing was organized by attorney-advisors Conner Ball,* Marlissa Briggett,* Deborah A. Reid, Peter Reilly, Miguel A. Sapp,* Maxine G. Sharpe,* and Michelle Yu,* under the general supervision of General Counsel Stephanie Y. Moore and Deputy General Counsel Edward A. Hailes, Jr. The Commission also appreciates the assistance provided by Eileen Rudert, S. Bernice Rhodes,* and Pamela Moye in preparing for the hearing.

The report was initially drafted by team leader Maxine G. Sharpe and attorney-advisors Marlissa Briggett, Deborah A. Reid, and Peter Reilly under the general supervision of General Counsel Stephanie Y. Moore. Additional assistance was provided in the final stages of the project by Kim Ball, Erik Brown,* Sicilia Chinn,* Joseph Manalili,* Joyce Smith, and Christopher Yianilos,* under the general supervision of Acting General Counsel Edward A. Hailes, Jr. Editorial policy review was performed by Robert G. Anthony, Ki-Taek Chun, and Betty Edmiston. The report was prepared for publication by Dawn Sweet.

* No longer with the Commission

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Preface

> Despite the symbolic gestures of fairness, decency and respect [that we are only beginning] to practice in the American South, the quality of life [in the Mississippi Delta] . . . is still compromised by our racial preoccupation. . . . [I]t is not sufficient merely to listen and report, but we must think of doing something that will . . . finally . . . resolve what seems to be a historical and endless problem in this country.[1]

These words highlighted the enduring challenge before the Commission as it began its public hearing in the Mississippi Delta. This report is based on sworn testimony from that hearing and subpoenaed documents received by the U.S. Commission on Civil Rights in a three-day hearing in Greenville, Mississippi, on March 6–8, 1997, as well as legal research and analysis. The Mississippi Delta hearing was the sixth in a series of hearings convened by the Commission as part of its nationwide project, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*, examining the factors underlying increased racial and ethnic tensions in the United States and developing policies to alleviate such tensions. Earlier hearings were held in the Mount Pleasant neighborhood of Washington, D.C. (January 1992); Washington, D.C. (May 1992); Los Angeles, California (June 1993); New York, New York (September 1994);[2] and Miami, Florida (September 1995). The Mississippi Delta project was intended to evaluate racial and ethnic tensions in a rural setting.

The Mississippi Delta is one of the more culturally and geographically distinct regions in the country. Broadly defined, the Delta region begins at the southern portion of Illinois and ends in Louisiana, where the Mississippi River empties into the Gulf of Mexico, and consists of 219 counties and 8.3 million people.[3] However, the Delta is more commonly thought of as "begin[ning] in the lobby of the Peabody Hotel in Memphis and end[ing] on Catfish Row in Vicksburg [Mississippi]."[4] Under this definition, the Delta region is about 200 miles long and 70 miles wide at its widest point.[5]

The Mississippi Delta region also is one of the poorest areas in the country and has been described as a "Third World country in the heart of America."[6] The region's current economic problems have been linked to its history of enslavement of a large portion of its population and the legacies of that period, which include Jim Crow laws, racial segregation of public educational institutions, and disenfranchisement of blacks. Slavery as practiced in the American South was probably as severe as any form of it in recorded history.[7] Charles Sackett Sydnor, the Southern historian, once wrote, "Mississippi differed from the upper tier of slave States in that it was a buyer of slaves, that it had more of a frontier civilization, and that it was given over almost entirely to cotton planting. *A priori*, these facts should have made the life of slaves harder and more laborious in this State than in the upper slave States."[8] For slavery to work in a sparsely settled land, white repression had to strain the limits of black endurance. The entire legal apparatus was used by those with power to promote white supremacy and black degradation. It was used to cause one group of human beings to receive special, harsh, and disparate treatment so that slave owners could escape work and increase wealth. The late A. Leon Higginbotham Jr. pointed out in *Race and the American Legal Process* that "the [legal apparatus] sought the *total* submission of blacks [and] . . . incorporated into its law-made morality the psychological conceptions Frederick Douglass subsequently described:

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[1] Jerry Ward, chairperson, Mississippi Advisory Committee to the U. S. Commission on Civil Rights, statement before the U.S. Commission on Civil Rights, hearing, Greenville, MS, Mar. 6–8, 1997, transcript, p. 19.

[2] In July 1995, the Commission held a Documents Hearing in New York, NY, in order to obtain relevant documentary evidence to supplement the record of the September 1994 hearing.

[3] Lower Mississippi Delta Development Commission, *The Delta Initiatives*, May 14, 1990, p. 165.

[4] This description was coined by writer David Cohn in 1935. Christina Schwarz and Benjamin Schwarz, "Mississippi Monte Carlo," *The Atlantic Monthly*, January 1996, p. 67.

[5] Ibid.

[6] Michael Parfit, "And What Words Shall Describe the Mississippi, Great Father of Rivers," *Smithsonian*, February 1993, p. 36.

[7] Richard Kluger, *Simple Justice* (New York: Vintage Books, a Division of Random House, 1977) p. 27.

[8] Charles S. Sydnor, *Slavery in Mississippi* (Louisiana State University Press, 1966) p. viii.

> Beat and cuff the slave, keep him hungry and spiritless, and he will follow the chain of his master like a dog, but feed and clothe him well, work him moderately and surround him with physical comfort, and dreams of freedom will intrude . . . You may hurl a man so low beneath the level of his kind, that he loses all just ideas of his natural position, but elevate him a little, and the clear conception of rights rises to life and power, and leads him onward.[9]

The struggle to overcome the vestiges of slavery has persisted. In the area of the Delta designated as an empowerment zone in 1994, per capita income is one-third the national average, nearly 40 percent of the residents live in public housing, and the high school dropout rate is almost 50 percent.[10] Poverty in the Delta affects the region's black residents more severely than its white inhabitants, with 54.9 percent of the black population living in poverty, according to 1990 statistics.[11]

The Commission's Mississippi Delta project examined three topics with respect to racial and ethnic tensions. First, the project addressed economic opportunity in the Delta in an attempt to determine the impact of the region's unique history on its current economic conditions and on its prospects for future economic development. The second topic was an assessment of educational opportunity in Mississippi's public schools. In higher education, the project addressed the impact of the U.S. Supreme Court decision in *United States v. Fordice*[12] on students, teachers, public institutions of higher learning, and, ultimately, race relations in Mississippi. The Commission also examined primary and secondary education in Mississippi, including such issues as funding practices and policies, student achievement, and ability tracking of minority students. Finally, the project addressed voting rights in the Delta. Specifically, the Commission examined the effect of the Voting Rights Act of 1965 on political representation in the region and the ability to translate political power into economic opportunity.

Based on the testimony of witnesses, analysis of subpoenaed documents, and legal research, the Commission makes a number of preliminary findings and recommendations which it directs to the attention of the President, Congress, and the American people.

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[9] A Leon Higginbotham Jr., *Race and the American Legal Process* (New York: Oxford University Press, 1978) p. 9; Frederick Douglass, *Life and Times of Frederick Douglass* (New York: Collier Books, 1962), p. 150.

[10] "USDA Report Success in Projects in Poor Areas of the South," *The New York Beacon*, June 26, 1996, p. 32.

[11] Larry Doolittle and Jerry Davis, *Social and Economic Change in the Mississippi Delta: An Update of Portrait Data* (Mississippi State University, May 1996), p. 8.

[12] 505 U.S. 717 (1992).

CHAPTER 1

Equality of Economic Opportunity

RACE AND THE ECONOMY OF THE DELTA

Socioeconomic Conditions

The Lower Mississippi Delta region is an enormous area encompassing portions of seven states—Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee—beginning in southern Illinois and ending at the southeastern tip of Louisiana. The Delta is composed of 219 counties and is home to 8.3 million people.[1] A majority of the residents are black and their current socioeconomic condition, which has been the subject of numerous studies, can generally be characterized as one of limited economic resources; inadequate employment opportunities; insufficient decent, affordable housing; and poor quality public schools. The region's unique history of slavery, with its debilitating legacies—the sharecropping system, Jim Crow laws, the concentration of wealth in the hands of a minority white population, the political disenfranchisement of blacks, and the nearly total social segregation of the races—has been well documented and is generally viewed as the most significant factor in the region's present position as among the poorest, if not the poorest, section of the nation based on virtually every socioeconomic measurement.

Mississippi

In each of the 13 Mississippi counties selected by the Commission for review, blacks constitute the majority of the population, from a low of 53 percent in Yazoo County, to a high of 76 percent in Holmes County.

TABLE 1.1

Black Population for Selected Mississippi Counties

County	% black
Bolivar	63
Coahoma	65
Holmes	76
Humphreys	68
Issaquena	56
Leflore	61
Quitman	59
Sharkey	66
Sunflower	64
Tallahatchie	58
Tunica	75
Washington	58
Yazoo	53

SOURCE: U.S. Department of Commerce, Bureau of the Census, *County & City Data Book*, 1994.

Each of these majority-black counties is marked by high unemployment and high poverty rates for all residents. For example, Tunica County, which has been called "America's Ethiopia" by the Reverend Jesse Jackson,[2] has the highest percentage of families living below the poverty level, 50.5 percent, and the highest unemployment, 17 percent. And, with the exception of Humphreys and Yazoo, all selected counties are marked by double-digit unemployment rates and high family poverty rates, from 27.9 percent in Washington County, to Tunica's 50.5 percent.

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[1] Lower Mississippi Delta Development Commission, *The Delta Initiatives: Realizing the Dream . . . Fulfilling the Potential*, May 14, 1990, p. 165 (hereafter cited as LMDDC Report).

[2] Christina Schwarz and Benjamin Schwarz, "Mississippi Monte Carlo; Gambling Industry in Tunica County," *The Atlantic Monthly*, January 1996, p. 67 (hereafter cited as Schwarz, "Gambling Industry").

TABLE 1.2

Families below Poverty Level and Unemployed for Selected Mississippi Counties

County	% below poverty	% unemployed
Bolivar	35.4	4.3
Coahoma	36.6	13.8
Holmes	45.5	15.8
Humphreys	38.3	7.4
Issaquena	42.9	10.0
Leflore	31.5	11.4
Quitman	33.8	11.8
Sharkey	38.9	10.1
Sunflower	34.7	10.8
Tallahatchie	34.5	13.4
Tunica	50.5	17.0
Washington	27.9	12.4
Yazoo	31.8	9.4

SOURCE: U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population, Social and Economic Characteristics, Mississippi*, table 3, p. 7, and table 2, p. 4.

However bleak a picture is presented by these overall statistics, the profile for black residents is even worse. The percentage of black families with incomes below the poverty level runs from a low of 46.4 percent in Washington County to a high of 68 percent in Tunica County. White families' poverty rates in the selected counties range from Holmes County's 7.2 percent to Tallahatchie County's 14.9 percent.

TABLE 1.3

Families below Poverty Level by Race for Selected Mississippi Counties

County	Black families	White families
Bolivar	53.4%	9.6%
Coahoma	58.5	8.2
Holmes	61.3	7.2
Humphreys	55.2	10.8
Issaquena	62.8	–
Leflore	51.5	8.9
Quitman	51.9	13.8
Sharkey	60.2	8.8
Sunflower	54.7	7.5
Tallahatchie	54.2	14.9
Tunica	68.0	12.2
Washington	46.4	7.8
Yazoo	54.2	11.2

SOURCE: U.S. Department of Commerce, Bureau of the Census, *1990 Census Population, Social and Economic Characteristics, Mississippi*, table 8, pp. 31–32, and table 9, pp. 34–36.

The racial disparity is similarly acute in the region's unemployment rates: although the overall unemployment rate in the 13 counties is 12.1 percent, the rate for blacks averages 13.3 percent, while the white rate averages a mere 3.8 percent.

TABLE 1.4

Unemployment Rates by Race for Selected Mississippi Counties

County	Black	White
Bolivar	23.4%	3.9%
Coahoma	21.9	4.7
Holmes	21.9	3.7
Humphreys	10.5	2.5
Issaquena	15.3	–
Leflore	18.3	4.3
Quitman	20.5	3.3
Sharkey	16.0	2.9
Sunflower	16.7	3.5
Tallahatchie	20.0	6.6
Tunica	23.8	2.0
Washington	21.1	3.6
Yazoo	15.9	4.4

SOURCE: U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population, Social and Economic Characteristics, Mississippi*, table 8, p. 31, and table 9, p. 34.

Arkansas

Although blacks constitute a majority of the population in only one of the seven selected Arkansas counties, 57.4 percent in Chicot, they are a significant percentage of the population throughout the Arkansas Delta region.

TABLE 1.5

Black Population for Selected Arkansas Counties

County	% black
Arkansas	22.3
Ashley	28.0
Chicot	57.4
Desha	43.4
Drew	27.9
Jefferson*	44.0
Lincoln	37.1

* Includes the city of Pine Bluff.

SOURCE: U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population, Social and Economic Characteristics, Arkansas.*

And while the overall percentage of families living below the poverty line is lower than the percentage in the Mississippi state portion of the Delta, Arkansas' poverty rates are still in the double digits in all selected counties. Further, the high overall unemployment rates rival those found in the Mississippi Delta region.

TABLE 1.6

Families below Poverty Level and Unemployed for Selected Arkansas Counties

County	% families below poverty level	% unemployed
Arkansas	15.7	6.2
Ashley	17.4	8.5
Chicot	18.3	14.0
Desha	27.3	11.9
Drew	20.2	7.9
Jefferson	19.3	9.9
Lincoln	19.6	8.0

SOURCE: U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population, Social and Economic Characteristics, Arkansas*, table 3, p. 7, and table 2, p. 4.

Like Mississippi state, the Arkansas Delta's poverty and unemployment rates are higher for its black population, with both averaging three to five times those for whites.

TABLE 1.7

Unemployment and Family Poverty Rates by Race for Selected Arkansas Counties

County	% black poverty	% white poverty	% black unemployed	% white unemployed
Arkansas	39.0	10.4	13.3	4.7
Ashley	39.5	10.4	15.9	6.4
Chicot	54.1	10.9	23.3	6.3
Desha	51.9	13.3	23.9	4.6
Drew	38.5	13.9	12.9	6.3
Jefferson*	38.3	8.2	17.3	5.7
Lincoln	48.2	11.0	14.6	6.1

* Includes the city of Pine Bluff.

SOURCE: U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population, Social and Economic Characteristics, Arkansas*, table 8, p. 30, and table 9, p. 33.

Louisiana

The six selected Louisiana parishes include East Carroll Parish where, according to *Time* magazine, there was found "The Poorest Place in America"—the town of Lake Providence.[3] According to the 1990 census, the median annual income for two-thirds of the town, Block Numbering Area 9903, is $6,536, the lowest in the nation, whereas the official national poverty level for a family of four is $14,764.[4] In addition, a study found that in Lake Providence, 70.1 percent of children younger than 18 are living in poverty—the highest rate in the nation.[5] As for overall family poverty rates, the black rate is 75.7 percent, while the rate for white families is 15.2 percent.

TABLE 1.8

Black Population for Selected Louisiana Parishes

Parish	% black
East Carroll*	64.8
Madison	59.5
Morehouse	41.5
Ouachita**	31.0
Richland	36.5
West Carroll	16.7

* Includes Lake Providence.

** Includes Monroe.

SOURCE: U.S. Department of Commerce, Bureau of the Census, *County & City Data Book*, 1994, table B, p. 242.

TABLE 1.9

Unemployment and Family Poverty Rates by Race for Selected Louisiana Parishes

Parish	% black poverty	% white poverty	% black unemployed	% white unemployed
East Carroll	71.6	23.3	40.1	4.8
Madison	58.5	12.3	25.9	5.4
Morehouse	50.8	10.8	22.2	7.3
Ouachita	48.8	8.7	19.1	5.3
Richland	56.4	13.9	19.4	6.6
West Carroll	57.1	17.1	17.6	11.1

SOURCE: U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population, Social and Economic Characteristics, Louisiana*, table 8, pp. 39–40, and table 9, pp. 43–44.

Based on the data presented in tables 1.1–1.9 above, it is clear that the Delta is an economically impoverished region for both blacks and whites. However, the data also reveal that black Delta citizens are the poorest of the poor. In every section of the region a majority, or near majority, of the black residents live in poverty. Such is not the case for a majority of the region's white residents.

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[3] Jack E. White, "The Poorest Place in America," *Time*, Aug. 15, 1994, p. 35.

[4] Ibid.

[5] Ibid.

One of the more comprehensive reports on the area was completed by the Lower Mississippi Delta Development Commission (Delta Commission), established by the U.S. Congress in October 1988 to study and make recommendations regarding economic conditions in the entire Lower Mississippi region.[6] In its 1990 final report on the area's 219 counties and parishes in Arkansas, Louisiana, Mississippi, Missouri, Illinois, Tennessee, and Kentucky, the Delta Commission referred to the region as a place where:

> jobs are scarce and jobs skills training almost unknown; where infant mortality rates rival those in the Third World; where dropping out of school and teenage pregnancy are commonplace; where capital for small farmers and small businesses is severely limited; where good housing and health care are unattainable for many; where industrial technology lags a decade behind and funds for research and development barely trickle to colleges and universities; where illiteracy reigns as a supreme piece of irony: the region has produced some of the best writers and the worst readers in America.[7]

Another recent study that essentially reiterates many of the Delta Commission's findings is a report by the Federal Reserve Bank of St. Louis titled *Rural Economic Development: A Profile of Eight Rural Areas Located in the Lower Mississippi Delta Region*. This February 1995 report, which profiles eight rural areas of the Lower Mississippi Delta region to assess the economic development and credit needs of the communities, followed approximately 120 meetings with more than 200 residents and representatives of lending institutions and community, housing, and small-business development organizations. Among the many problems noted were the region's crisis in housing, particularly its lack of decent, affordable housing for low-income and elderly residents; residents' inability to obtain home improvement loans; a severe shortage of rental housing; a limited amount of land available for new home construction; a continued need for financial support for the region's dwindling agricultural business; and the difficulties small businesses encounter in acquiring capital and credit. The main goal of all communities, according to the report, is the creation of jobs,[8] a goal that has been identified by public officials and theorists alike as a prerequisite for the region's revitalization.[9]

Employment

Although equality of opportunity in agriculture will be more fully discussed later in this report, it is clear that the sheer number of jobs in agriculture in the Delta has declined significantly in recent years, beginning with the increased mechanization of farming in the early part of this century. The research and history do not indicate any reversal of this trend. Accordingly, it is unlikely that agriculture will provide the number of new jobs that must be created to revitalize the economy and equalize economic opportunities for black and white residents.

Farm work today has been toppled from its previous position as the region's primary source of employment to be replaced in part by the catfish industry.[10] Seventy-five percent of the world's supply of catfish comes from Mississippi.[11] It has been reported that the industry is a $247 million per year business for the state of Mississippi[12] and that it generates $1 billion in sales for the entire Delta region.[13] However, questions have been raised as to whether this industry is capable of providing a majority of the necessary jobs and financial security for the region's impoverished black masses since the demand for catfish has decreased, its employees are mainly seasonal, the jobs provide no benefits, and employees receive no profits from the industry.[14]

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[6] *See* Pub. L. No. 100-460.

[7] LMDDC Report, p. 6.

[8] Federal Reserve Bank of St. Louis, *Rural Economic Development: A Profile of Eight Rural Areas Located in the Lower Mississippi Delta Region*, February 1995, p. 4 (hereafter cited as Federal Reserve Report).

[9] "Few would disagree with Herbert Gans, who said that 'the best remedy for poverty is a large supply of jobs.' " Herbert J. Gans, *The Urban Villagers: Group and Class in the Life of Italian-Americans* (New York: The Free Press, 1982), p. 312, as cited in Leif Jensen, "Employment Hardship and Rural Minorities: Theory, Research, and Policy; Special Issue: Blacks in Rural America," *The Review of Black Political Economy*, vol. 22, no. 4 (Mar. 22, 1994), p. 125. *See also* Dick Kirschten, "The Delta Looks Up," *The National Journal*, vol. 22, no. 40 (Oct. 6, '1990) p. 2382, in which the mayor of Jonestown, MS, a Delta town, states that the town's "biggest problem is the lack of jobs."

[10] LMDDC Report, p. 165; Pat Hanna Kuehl, "Destination: Mississippi," *The Los Angeles Times*, Nov. 5, 1995, p. L10.

[11] Ibid.

[12] Wilbur Hawkins, testimony before the U.S. Commission on Civil Rights, hearing, Greenville, MS, Mar. 6–8, 1997, transcript, pp. 361–62 (hereafter cited as Hearing Transcript).

Lack of financial resources and financial insecurity in general are also possibilities for more prosperous black residents of the Delta. The region has noted a decline in the number of black teachers due at least in part to difficulties blacks have encountered with teacher certification requirements.[15] Regardless of the reasons for such problems, a decline in black teachers is likely to adversely affect educational attainment by black students, which in turn will negatively affect the ability of the region to attract employers who desire an educated, literate work force.[16] This potential problem will be more fully addressed in the education portion of this report. The financial security of other nonpoor blacks in the region may also be threatened due to discrimination. According to some reports, black attorneys in the Delta are subjected to greater scrutiny by bar associations than white attorneys, and black physicians are being denied hospital privileges due to discrimination by whites.[17]

The most recent significant business development, which has inspired hope in both black and white communities for improved economic opportunities, is Mississippi's legalization of dockside gaming casinos. In 1991, the state enacted the Gaming Control Act legalizing gambling, with the first gaming boat opening on August 1, 1992.[18] Near the time of the Commission's Mississippi Delta hearing,[19] there were 29 state-regulated casinos and, according to the state gambling commission, 13 of the 29 casinos were in majority-black counties: 9 in Tunica County, 3 in Washington County; and 1 in Coahoma County.[20] The available employment data for 27 of the 29 casinos at that time is shown in table 1.10.

TABLE 1.10

Employment in Mississippi Casinos, June 1997

Gender		Race	
45.5%	male	56.3%	white
54.5%	female	39.4%	black
		2.4%	Asian [American]
		1.5%	Hispanic
		0.3%	Native American

SOURCE: Paul A. Harvey, executive director, Mississippi Gaming Commission, letter to U.S. Commission on Civil Rights, June 20, 1997.

Despite this apparently positive statistical information that tends to support the state gaming commission's contention its work force is representative of the region's population—both in terms of race and gender—the Mississippi Gaming Commission maintains no data on race or gender for the various jobs within the casinos or on the salaries of casino employees by race and gender. It is not the function or the responsibility of the Mississippi Gaming Commission, which is a regulatory law enforcement body, to request or collect data on equal opportunity employment in the casinos. Indeed, there is no requirement such data be tracked by the state gambling commission, which has no responsibility or authority regarding the promotion or enforcement of equal employment opportunity within the industry.[21]

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[13] Becky Gillette, "Land of Cotton and Catfish Seeking Healthy Diversity From Other Types of Development," *Mississippi Business Journal*, vol. 20, no. 20 (May 18, 1998), p. 1 (hereafter cited as Gillette, "Diversity From Other Types of Development").

[14] Hawkins Testimony, Hearing Transcript, pp. 361–62. *See also* James C. Cobb, *The Most Southern Place on Earth: The Mississippi Delta and the Roots of Southern Identity* (Oxford University Press,1992), pp. 330–32; and Eric Bates, "The Kill Line," *Southern Exposure*, vol. 19, no. 3 (Fall 1991), p. 23, as cited in Jacqueline Jones, "The Late Twentieth-Century War On the Poor: A View From Distressed Communities Throughout the Nation," *Boston College Third World Law Journal*, vol. 16 (Winter 1996), p. 6. "In the Mississippi Delta . . . in some cases, even new industries hold little promise in the long run for these families. For example, in Indianola [Mississippi], the catfish industry depends on a work force that is largely black, female, and poor. However, not only do the fish processing jobs pay little, they are also vulnerable to larger market forces. In 1990, a strike of 900 workers at the Delta Pride plant resulted in modest wage increases and better working conditions, but soon after, the whole industry began to institute cutbacks to counter the effects of a saturated market. This case illustrates the thread of continuity linking a slave past to a postindustrial present; where black women once chopped and picked cotton for white landowners, they now stand for hours and each rip and gut as many as 20,000 fish a day. Where they once suffered from back-breaking stoop labor, they now suffer from carpal tunnel syndrome, a crippling hand disease." Ibid.

[15] Ronald A. Hudson Testimony, Hearing Transcript, pp. 538–43.

[16] Ibid.

[17] John Walker Testimony, Hearing Transcript, pp. 518–20.

[18] *The Clarion-Ledger*, Nov. 28, 1995, p. 3B.

[19] According to Mick Lura, chief of staff of the Mississippi Gaming Commission, there were 30 licensees as of Sept. 3, 1999. In February 1999, a new casino, the Beaurivage, opened in Biloxi, MS. In July 1999, a new casino, the Isle of Capri, opened in Tunica, MS. Two casinos in Greenville, MS, the Las Vegas Club and the Jubilee were consolidated in July 1999 (Mick Lura, letter to Mississippi Delta project team leader Maxine G. Sharpe, Sept. 3, 1999, and telephone conversation between Mick Lura and Maxine G. Sharpe on Sept. 9, 1999).

[20] Paul A. Harvey, letter to U.S. Commission on Civil Rights, June 20, 1997 (hereafter cited as Harvey Letter).

The introduction of casinos in Mississippi clearly has dramatically increased the number of jobs in the region and has resulted in increased revenue for the state. In the Delta, casino jobs have coincided with an extraordinary decline in overall unemployment rates. Between 1992 and 1993, Tunica County, currently home to nine casinos, has noted a 32.1 percent decrease in its overall unemployment rate, from 13.7 percent to 9.3 percent.[22] Tunica residents saw a 30.4 percent increase in employment.[23] Unemployment rates also dropped in counties adjacent to those with casinos, suggesting a significant number of new casino employees were residents of the neighboring counties.[24] And, according to the executive director of the state gaming commission who maintains that the introduction of casinos has profoundly and positively affected the Delta and its black residents, "anyone who wants a job, can get a job."[25]

Employment information on Mississippi's state-regulated casinos is collected at both the state and federal levels. At the federal level, the Equal Employment Opportunity Commission (EEOC) collects and publishes employment information that provides a breakdown of the employer's work force by race, sex, and national orgin, and by occupation.[26] At the state level, the Mississippi Gaming Comission keeps a record of the total number of casino employees, and the Mississippi Employment Security Commission provides labor force data. Quarterly survey information from the Mississippi Gaming Comission through September 30, 2000, showed 34,263 people were employed by casinos in Mississippi.[27]

Casinos in four counties participated in EEOC's 1999 EEO-1 survey.[28] A 1997 population report by the Mississippi Employment Security Commission indicated approximately 75 percent of the population in the participating counties was white and 25 percent was nonwhite.[29] Statistical data by race and ethnicity from the EEO-1 aggregate report revealed:

- 50.7 percent of casino employees are white.
- 45.3 percent are black.
- 1.2 percent are Hispanic.
- 2.5 percent are Asian American.
- 0.4 percent are Native American.[30]

The EEO-1 report also provided statistical data by occupation. Occupations were divided into nine categories: officials and managers, professionals, technicians, sales workers, office and clerical workers, craft workers, operatives, laborers, and service workers. Percentages by categories are as follows:

- Whites accounted for 72.9 percent of all officials and managers and accounted for 42 percent in all other categories except laborers, where they accounted for 26.3 percent.[31]

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[21] Paul A. Harvey Testimony, Hearing Transcript, pp. 528–30.

[22] Marianne T. Hill, Center for Policy Research and Planning, Mississippi Institutions of Higher Learning, *Labor Market Effects of Gaming in Mississippi*, CPRP Working Paper: 9402 (July 1994), p. 2.

[23] Ibid., p. 1.

[24] Ibid.

[25] Harvey Testimony, Hearing Transcript, p. 549.

[26] The Employer Information EEO-1 survey is conducted annually pursuant to 42 U.S.C. § 2000e-8(c) (LEXIS through 2000 Sess.) and 29 C.F.R. §§ 1602.7–1602.14 (2000).

[27] Mississippi Gaming Commission Property Data, "Quarterly Survey Information: July 1, 2000–September 30, 2000," <http://www.msgaming.com/main-reports.html>.

[28] The four counties were Hancock, Harrison, Tunica, and Warren.

[29] Mississippi Employment Security Commission, "Mississippi Labor Market Information for Affirmative Action Programs," March 2000, <http://www.mesc.state.ms.us/lmi/files/aaction/pdf/aaction300.pdf>.

[30] Patrick Ronald Edwards, acting chief, Research and Technical Information Branch, Program Research and Surveys Division, Office of Research, Information and Planning, U.S. Equal Employment Opportunity Commission, advance copy of the 1999 EEO-1 aggregate report as a facsimile to U.S. Commission on Civil Rights, Nov. 15, 2000, p. 5 (hereafter cited as Edwards Facsimile).

- Blacks accounted for 24.6 percent of all officials and managers and had the highest concentration—71.2 percent—in the laborers. Another noticeable discrepancy was within the professionals: blacks accounted for 33.7 percent, while whites accounted for 65 percent.[32]
- Hispanics accounted for 1.4 percent of all office and clerical workers and 1.3 percent of all craft workers. Their percentages were the lowest in the laborers with 0.5 percent and the professionals with 0.4 percent.[33]
- Asians were highly concentrated in the craft workers, accounting for 4 percent. They were least likely to be professionals and office and clerical workers—0.9 percent and 0.6 percent, respectively.[34]
- American Indians accounted for less than 1 percent of all employees.[35] Their highest concentration was in the craft workers with 0.5 percent. There were no American Indians in the professionals and 0.1 percent in the technicians.[36]

Apart from employment statistics, there appear to be other financial benefits of legalized gaming to both the state and local governments. The industry has earmarked 7.2 percent of its gross revenues for the state's general fund, and 0.8 percent is allocated to the cities or counties that have legalized gaming.[37] In addition, local and private legislation place a 3.2 percent tax on gaming revenues to benefit local governments for specific public purposes, e.g., education.[38] Statewide, in fiscal year 1995, over $144.6 million in revenue went to the state, and over $69 million was allocated to local governments that have legalized gaming.[39] It has been reported that casinos provide approximately $2.5 million per month in revenues to Tunica County alone and that from August 1994 to August 1995 total profits from Tunica casinos were $46.8 million per month, more than any other casino in the state.[40] Tunica was also the first market to reach $60 million in monthly revenue and in August 1995 reported profits of 64.2 million.[41] In 1993, *US News & World Report* listed Mississippi as first in a national ranking of states in economic recovery based primarily on its legalized gambling.[42]

The question remains whether the introduction of legalized gaming will result in sustainable job growth for a significant percentage of the region's unemployed and impoverished residents. Will these jobs offer Delta residents livable wages and opportunities for employment advancement in a nondiscriminatory manner? Will the casinos provide the quantity and quality of jobs that must be created in the Delta in order to significantly improve the lives of its citizens? Before the introduction of casinos, significant occupational segregation by race existed in the Delta, with blacks heavily concentrated in lower paying jobs. In Bolivar County, Mississippi, for example, as of the 1990 U.S. census, whites were 52 percent and blacks 48 percent of the total population of employed persons over the age of 16.[43] Yet whites held 63 percent of the managerial positions and 72 percent of the technical and sales positions, while blacks held 74 percent of the low-level service jobs and 69 percent of the operator and general laborer positions.[44]

The statistical data support the argument that occupational segregation exists in the legalized gaming industry. Anecdotal evidence also suggests possible problems in this area and, in general, with the concept that legalized gaming alone represents a viable long-term solution to the economic problems facing the region's black population. It has been reported blacks are mainly employed in minimum-wage jobs and, as a group, have high termination and turnover rates.[45]

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[31] Ibid.

[32] Ibid.

[33] Ibid.

[34] Ibid.

[35] Indian-owned casinos are not required under 42 U.S.C. § 2000e-8(c) to report to the EEOC; therefore, employment information on the Indian-owned casino(s) in Mississippi is not included.

[36] Edwards Facsimile, p. 5.

[37] Harvey Letter.

[38] Ibid.

[39] Ibid.

[40] Derrick Crawford Testimony, Hearing Transcript, p. 556; Lee Ragland, "Tunica's Casinos Outrunning the Pack," *The Clarion-Ledger*, Oct. 2, 1995, p. A1.

[41] Ragland, "Tunica's Casinos Outrunning the Pack," p. A1.

[42] Sara Collins and Warren Cohen, "How the States Stack Up," *US News & World Report*, Nov. 8, 1993, p. 66.

[43] Bureau of the Census, 1990 Census of Population, *Social and Economic Characteristics, Mississippi*, p. 383, table 155.

[44] Ibid., p. 401, table 156.

During the Commission's hearing, one witness questioned a Delta casino's decision to hire as a casino manager a Bosnian immigrant only two years in the United States rather than a local resident.[46] The economic assistance regional director for the Mississippi State Department of Human Services, who formerly served as the director of the Tunica County Department of Human Services, disagreed with the conclusion reached by the gaming commission executive director that "anyone who wants a job can get a job," citing the unavailability of casino employment for those who are classified as borderline disability cases under Social Security or Supplemental Security Income standards.[47] Moreover, in a region of the country well known for its historically socially conservative climate, many blacks, for religious reasons alone, would rather remain unemployed than work in a casino.[48]

Finally, the dramatic financial dividends of legalized gambling are also accompanied by devastating economic and social consequences, according to some experts. At its September 1998 hearing in Biloxi, Mississippi, the National Gambling Impact Study Commission received testimony regarding the alleged increase in personal bankruptcies connected to gambling problems. Although national surveys show 2 percent of bankruptcies are connected to gambling, results of a study presented at the hearing by the National Gambling Impact Study Commission indicated a much greater rate of bankruptcies related to gambling—21 percent—when people are in close proximity to a casino.[49] And although there was testimony from Mississippi officials on the benefits of gambling, particularly for Tunica County, there was also testimony from a researcher who maintained his study of the effects of legalized gaming nationwide establishes that casinos produce little economic gain for the communities in which they are located.[50]

Clearly, jobs have been created and many previously unemployed blacks have found employment in the gaming industry. However, poorly educated and unskilled residents have been unable to take advantage of the employment opportunities in the gaming industry, which has yet to prove long-term viability and profitability. Finally, no mechanism exists to ensure that Delta blacks, who obtain employment in the industry, will obtain equality of opportunity in job placement, working conditions, and advancement.[51]

Job growth has also occurred in other business sectors. Northwest Mississippi during 1980–1996 saw a 17 percent increase in the manufacturing employment, while nationwide, this industry remained basically unchanged, according to the director of the Delta Council.[52] And although some job growth in the manufacturing sector is related to agriculture, much of it is the result of nonagriculture-related new businesses. In Cleveland, Mississippi, for example, Baxter Healthcare produces intravenous solutions for medical use and Duo-Fast makes nails and staples.[53] Greenwood, Mississippi, is now the site of Viking Range, which produces kitchen appliances and Irving Automotive, which manufactures interior parts for Ford and Toyota. In addition, it was reported in May 1998 Viking began construction in Itta Bena, Mississippi, of a new $4.1 million facility.[54] This growth in manufacturing jobs, according to some reports, has resulted in $924 million in wages in 1996 for 40,000 employees and a rise in per capita income from $6,000 in 1980 to $17,000 in 1996.[55]

Additionally, the designation of the region as an empowerment zone, according to some reports, has resulted in an increase in nonagriculture-related jobs. This designation has resulted in Dollar General's construction of a $38 million distribution center in Indianola, Mississippi, which is expected to employ 500, and has been credited with creating additional jobs related to the center, including 300 construction-related jobs and positions in local hotels and restaurants.[56]

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[45] Walker Testimony, Hearing Transcript, pp. 567–68. *See also* Andrea Stone, "New Dawn in Mississippi Delta," *USA Today*, May 30, 1997, p. 6. Robert Hall, a high school teacher in Tunica, MS, reported that his students "fall asleep in class after working the overnight shift[s] at minimum-wage casino job[s]." Ibid.

[46] Walker Testimony, Hearing Transcript, p. 567.

[47] Crawford Testimony, Hearing Transcript, pp. 548, 552.

[48] Schwarz, "Gambling Industry," statement attributed to Witness Crawford. *See also* John Kifner, "An Oasis of Casinos Lifts a Poor Mississippi County," *The New York Times*, Oct. 4, 1996, pp. A1, A20, "a state so socially conservative that it was the last to repeal prohibition, in 1966."

[49] Becky Gillette, " 'Mississippi Miracle' Vies With Addiction Tales," *Mississippi Business Journal*, Sept. 21, 1998, p. 1.

[50] Ibid.

[51] Kifner, "An Oasis of Casinos Lifts a Poor Mississippi County," p. A20. Schwarz, "Gambling Industry."

[52] Gillette, "Diversity From Other Types of Development."

[53] Ibid.

[54] Ibid.

[55] Ibid.

Finally, the July 1998 opening of a Union Pacific Railroad terminal in Marion, Arkansas, is expected to result in additional jobs and revenues to the Delta. According to the Federal Railroad Administrator, the $70 million terminal is expected to have a "$2 billion impact on the regional economy by 2008."[57]

TABLE 1.11

Washington County (Mississippi) Employment and Welfare Statistics

	1992 average	1996 average	Change
Employment			
Total jobs	22,941	23,869	+4%
Manufacturing jobs	4,690	4,688	-.004%
Non-manufacturing jobs	18,251	19,181	+5%
Service jobs (includes casino jobs)	4,921	6,165	+25%
Unemployment rate	12.5	10.2*	-2.3
Welfare			
AFDC cases	3,270	2,708	-17%
AFDC dollar amount	$390,164	$315,728	-19%
Food stamp households	7,275	6,900	-5%
Food stamp dollar amount	$1,453,008	$1,353,329	-7%

* Most recent moving average; the state has not yet set a final figure for 1996.

SOURCE: Mississippi Employment Security Commission and Mississippi Department of Human Services. Addendum Hearing Exhibits, Paul Artman, mayor, Greenville, MS, Mar. 6, 1997.

Despite statistics showing increases in the number of jobs in casino- and noncasino-related industries, it is questionable whether these new industries are employing a significant number of impoverished Delta residents, who historically have been the victims of discrimination, and whether these businesses are providing poor Delta residents with an equal opportunity to obtain well-paying, permanent jobs with benefits.

Housing

Whether unemployed, underemployed, or employed in jobs paying livable wages, Delta residents face a crisis in finding decent, affordable housing. Generally, housing difficulties can be categorized as problems of affordability and quality. Throughout the entire Lower Mississippi Delta region, pervasive problems exist in the housing stock, and the housing conditions of the black population, like other socioeconomic indicators, are worse than those of their white counterparts.[58] In 1990, the median value of all owner-occupied units was $9,282, while the median value of black owner-occupied units was $5,113.[59] Across the region 76 percent of the total owner-occupied units had a median value of less than $14,999; among black owner-occupied units, it was 92 percent.[60] There is a lack of standard housing relative to the needs of low-income, single-parent, and aging households. In the Delta region, approximately 57,000 units have incomplete plumbing, 143,000 are overcrowded, and 650,000 units are "cost burdened."[61] Of the region's 2.2 million units, 792,000 have median rents of $40 per month and more than 860,000 are over 40 years old.[62]

The St. Louis Federal Reserve Bank report made similar findings regarding the region's housing conditions and also found that housing organizations in the region were "few in number and small in size."[63] In addition, according to the Federal Reserve, new home construction in the Delta is impeded by developers' reluctance to build in the region, especially their reluctance to build housing that is affordable for lower income Delta residents.[64] Finally, repairs to the region's many substandard homes are frustrated by owners' inability to afford home improvement financing under conventional interest rates.[65]

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[56] Ibid.

[57] "Slater Predicts New Terminal Will Bring Thousands of Jobs to Delta," *The Associated Press*, Aug. 3, 1998.

[58] *See generally* Jacquelyn W. McCray, project director, "Housing Problems and Solutions in the Lower Mississippi Delta," *Report to the Lower Mississippi Delta Commission, Contract No. DC-00111, Project No. IS*:A:7 (University of Arkansas at Pine Bluff, 1990).

[59] Ibid., pp. 6–7.

[60] Ibid.

[61] Occupants who spend more than 30 percent of their income for housing are "cost burdened"; *see generally* McCray, "Housing Problems and Solutions."

[62] Ibid.

[63] Federal Reserve Report, p. 4.

[64] Ibid., p. 9.

It is possible that the housing affordability and quality problems could be resolved through new jobs created by the expanding catfish and legalized gaming industries. However, current indications are that this is not occurring. For example, in Tunica County property values have increased 9,900 percent near potential casino development sites, suggesting that the price of land for new homes and property taxes may be beyond the means of most residents, even those with casino jobs.[66] There are reports that rents have skyrocketed, that there are few decent, low-cost homes available, and that there is a concerted effort by some white Delta residents to prevent the building of affordable homes for the masses.[67] One local white Tunica developer has been reported as blaming the local planning commission for stalling his efforts to build affordable housing for local blacks because "they don't want 'any more houses for black people to live in.' "[68]

Strategies to Improve Economic Opportunities

Despite the opinion that some prosperous white Deltans have no desire to see their black neighbors improve their economic circumstances, the seemingly insoluble and intractable poverty, the region's historic discrimination, and its nearly total economic and social separation of citizens along racial lines—all of which have contributed to the current economic condition of black Delta residents—local and national strategies to address the region's immense problems have been initiated.

Local Business and Commercial Interests

As the nation moves into a global economy with an increasing need for advanced technological initiatives, some members of the Delta business community are undertaking steps to secure a place for the Delta in this new world and, accordingly, transform the fundamental structure of its economy and the lives of all its residents.

Historically, one of the most powerful business organizations in the region has been the Delta Council, which was formed in 1935 in Stoneville, Mississippi. Among its past accomplishments are persuading the Mississippi State Legislature to allocate a majority of state sales tax revenues from motor fuel to fund a Delta highway program, securing funds from the federal government for flood-control projects, and helping local Delta communities expand their industrial-recruitment programs.[69] In addition, in previous years the organization, which traditionally concentrated its efforts on lobbying at the federal and state levels, succeeded in obtaining federal funds for a number of local Delta projects, e.g., funds to expand agricultural research facilities and weather forecasting services in Stoneville.[70] The council has also been credited with helping to increase the area's manufacturing wages in the 19-county area in which it operates, from approximately $53 million in 1960 to more than $590 million in 1985.[71] Despite these accomplishments and the generally acknowledged power and influence the organization wields within the region, the Mississippi Delta Council has not been known as an open, broad-based group, and certainly not one in which black Delta residents have participated. One view of the group is that it is "a patrician group of white planters."[72]

Another Delta-based business organization that apparently is attempting to avoid charges of elitism and racism is the Arkansas Delta Council. Founded in 1990, the organization reportedly is making a concerted effort to include blacks.[73] Pledging that it would not receive any government funds and not issue any reports, the Arkansas Delta Council planned to initiate economic development projects and focus on education. The group's first projects included negotiating with trade representatives from Japan to increase Arkansas catfish exports, seeking passage of state legislation designed to improve the coordination of the state's catfish and baitfish producers and processors, and initiating efforts to establish 10 school-based programs for 4-year-olds to complement current kindergarten programs.[74]

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[65] Ibid., p. 10.

[66] Schwarz, "Gambling Industry."

[67] Federal Reserve Report.

[68] Schwarz, "Gambling Industry."

[69] Rex Nelson, "Mississippi Dreaming: New Arkansas Business Group Looks to Mississippi Delta Council as Model," *Arkansas Business*, Mar. 11, 1991, p. 22.

[70] Ibid.

[71] Ibid.

[72] Ibid.

[73] Ibid.

Other Delta area business groups, including local chambers of commerce, often in partnership with nonprofit organizations, have strategized to bring new businesses to the area, expand the operations of already existing businesses, stimulate and encourage entrepreneurial activities in the black community, and improve the quality of education provided by the public school systems. Among such efforts are those initiated by the Chamber of Commerce Industrial Foundation of Clarksdale, Mississippi, whose mission is to further economic development, promote the growth of business activity, and increase industrial recruitment and retention.[75] To that end, the foundation has established a manufacturers' association, sponsored job fairs, and entered into partnerships with the Coahoma (County) Community College Skill Tech Center and the Delta Partners Initiative of Delta State University.[76] The foundation also is a leading organization in the Tri-County Workforce Alliance, which strives to create a collaborative effort for work force development and education.[77] In addition, it has created an Industrial Authority, which owns, manages, maintains and develops land in its industrial parks.[78] The Chamber of Commerce, meanwhile, has contracted with the county tourism commission to administer the commission's activities in an effort to support the region's tourism industry, which is viewed as a vital part of the local economy.[79]

The executive director of the Washington County (Mississippi) Economic Council reported that, through the council, he has worked to bring a number of new businesses into the Winoma, Mississippi, area, including a small automobile parts manufacturer, two furniture factories, and two automobile brake shoe manufacturers.[80] As a result of these new businesses, there has been a dramatic decline in the county's unemployment rate—from 26 percent in 1983 to 5–6 percent in 1995.[81] During the same time period, annual work force income increased from $32 million to $76 million, the second largest percentage income increase in that period for all counties in the state.[82]

There have been several other recent initiatives to expand economic opportunities for impoverished Delta residents, including the creation of small-business development centers[83] and assisting a community in its application for designation as an empowerment zone.[84]

In Monroe, Louisiana, which is in Ouachita Parish, the Chamber of Commerce has taken several steps to improve economic conditions and reduce racial tensions. According to the Chamber's president and chief executive officer, during the process of applying for designation as a federal empowerment zone, the city held communitywide meetings during which more than 1,500 people of all races and economic levels participated.[85] The city's failure in its bid for designation as an empowerment zone damaged race relations and raised issues of trust and power in the city. However, its designation as an enterprise zone means that it will receive $3 million for a community development corporation to lend money to small businesses to stimulate job growth. Monroe's Chamber of Commerce also has facilitated a partnership between local schools and businesses, identifying the types of jobs that will exist in the future and revamping the schools' curriculum so that local students can be qualified for those jobs.[86] The Monroe Chamber of Commerce, according to its president and CEO, is sensitive to the issue of diversity and has taken steps to include blacks in its programs and to introduce blacks to the business community. For example, it has established a Leadership Development Program that sets aside one day per month where selected young to middle-aged Monroe residents—black and white, male and female—along with Chamber members, examine different issues facing the community, e.g., the city's political structure and business concerns. The yearlong program also includes a retreat during which participants confer with state and local government officials on various issues. In July 1996, the chair of the Leadership Development Program was a black female labor union leader, who also served on the Chamber's executive committee.[87]

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[74] Ibid.

[75] Ronald A. Hudson Testimony, Hearing Transcript, pp. 493–94.

[76] Ibid., pp. 493–95.

[77] Ibid., p. 494.

[78] Ibid., p. 495.

[79] Ibid., pp. 495–96.

[80] George Harris, executive director, Montgomery County (MS) Economic Council, telephone interview, June 26, 1996.

[81] Ibid.

[82] Ibid.

[83] Ronald A. Hudson, executive director, Clarksdale-Coahoma County (MS) Chamber of Commerce, telephone interview, June 27, 1996.

[84] Michael Neal, president and chief executive officer, Monroe (LA) Chamber of Commerce, telephone interview, July 23, 1996.

[85] Ibid.

[86] Ibid.

Another Delta community that has instituted a leadership program to improve opportunities for all its citizens is Yazoo City, Mississippi. Sponsored by the Chamber of Commerce, several area businesses and the Mississippi Department of Economic and Community Development, Yazoo City's leadership program involves area churches and schools in a effort to bring together present and future area leaders in a yearlong program of seminars and retreats.[88] The participants are selected from all parts of the county, and the number of males/females and blacks/whites is representative of the gender and racial composition of Yazoo County.[89]

Community-Based Nonprofit and Self-Help Organizations

Among the latest strategies for improving economic conditions and promoting equality of opportunity for blacks are those being utilized by numerous community, nonprofit, and self-help organizations. These organizations typically are created and organized by coalitions of white and black residents.

One such group originally functioned as a committee within a local chamber of commerce. Now, the Washington County (Mississippi) Industrial Foundation is a separate nonprofit industrial program that strives to retain current jobs in the region and serves as an advocate for new job creation.[90]

In southeastern Arkansas, another organization operates a revolving loan program for small-business people.[91] The program requires that for every $8,000 loan, the borrower must create one new full-time job.[92] Another Arkansas-based organization, with a profit-making subsidiary that has purchased an automobile parts and service center employing low-income residents, plans to acquire two additional businesses.[93] These additional businesses are expected to produce 34 to 36 new jobs.[94] Other initiatives include the Dermott, Arkansas-based Pathways Program whose mission is to train residents to own and operate their own businesses.[95] The program operates businesses, e.g., resale and consignment stores, as laboratories for entrepreneurial training and self-development in four Arkansas counties: Ashley, Chico, Desha, and Drew. However, hindering the program's efforts is the "traditional lending concept" of the financial industry.[96] Also in Arkansas, the Southeast Arkansas Economic Development District operates a Job Training Partnership Act program that targets high school dropouts.[97]

Arkansas is also home to the East Central Arkansas Economic Development Corp., originally established in August 1964 as an Office of Economic Opportunity community action agency. Currently, the corporation operates a myriad of community-based programs with funds from federal, state, and local governments; foundations; churches; and individuals.[98] Among the corporation's many projects are its housing program, which has built more than 100 single-family, multiunit, and senior citizen rental housing units in a four-year period. Its current plans include a large single-family home development project consisting of 70 homes and including a large community center—for lease/purchase by low-income residents.[99] In addition, the corporation has established a for-profit subsidiary, East Arkansas Enterprises, Inc., which has purchased an auto parts and service center and several other businesses, all of which employ low-income people.[100]

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[87] The black female labor union leader, Eva Diane Wilson, is no longer the chair of the program. Each chair serves a one-year term. Ms. Wilson was chair for the 1996 calendar year. The current chair is John Anderson, an African American male, who is the community affairs director for the city of Monroe, Louisiana. The next chair, Linada Holyfield, assistant administrator of St. Francis Medical Center in Monroe, assumes office in January 2000. Ms. Holyfield is a white female. Michael Neal, telephone interview, Sept. 8, 1999.

[88] Gerald P. Fraiser, economic development coordinator, Yazoo (MS) County Chamber of Commerce, telephone interview, June 28, 1996.

[89] Ibid.

[90] Tommy Hart, executive director, Washington County (MS) Industrial Foundation, telephone interview, June 21, 1996.

[91] Glenn Bell, executive director, Southeast Arkansas Economic Development District, telephone interview, July 2, 1996.

[92] Ibid.

[93] Tommy Davis, executive director, East Central Arkansas Economic Development Corp., telephone interview, June 20, 1996 (hereafter cited as Davis Interview).

[94] Ibid.

[95] Hurley Jones Testimony, Hearing Transcript, p. 428.

[96] Ibid., p. 433.

[97] Glenn Bell Testimony, Hearing Transcript, pp. 458–59.

[98] *See* Davis Interview.

In Mississippi, the Community Individual Investment Corp. operates a revolving loan fund for new businesses.[101] And one of the major private sector organizations at work in the Delta today to change the socioeconomic conditions in the region is the eight-year-old Foundation for the Mid-South. The foundation is a nonprofit organization that secures funding from private sources to improve economic opportunity, the quality of education, and the services provided to families and children throughout the tristate Delta region. To that end, the foundation provides direct assistance to community-based organizations, towns, churches, schools, and interfaith organizations in the form of grants, training, and technical assistance.

One component of the foundation is the Enterprise Corporation of the Delta, a private nonprofit business development organization begun in June 1994, with the specific mission to assist existing Delta businesses and new businesses by providing needed financing, management assistance, and market development.

Another Mississippi organization is the Delta Foundation, a community development entity that initially was established to increase economic opportunities for blacks in Mississippi but now addresses economic issues of blacks and whites.[102] The Delta Foundation works to encourage business development, create jobs, and increase opportunities for business financing. To date, it has created some 6,000 jobs, 400–500 of which are found in plants run by its profit-making division—Delta Enterprise.[103] The plants of Delta Enterprise, most of which are in Greenville, Mississippi; Canton, Mississippi; and Arkansas, have operated for nearly 20 years and manufacture a number of items, including denim jeans, folding attic stairs, electronic parts, gaskets for weed eaters, and washing machine parts.[104] The Delta Foundation also has established a Small Business Administration-type demonstration program, which provides financing in the form of micro-loans of $10,000 or less and other loans up to a maximum of $25,000 to businesses that would otherwise not be able to obtain financing, many of which are minority owned.[105]

National Programs and Policies

One of the most ambitious efforts to address the region's poverty is the federal government's designation of the Mid-Delta region as an empowerment zone. Established by Congress in 1993, the Empowerment Zone/Enterprise Community Program was designed to help impoverished areas develop comprehensive approaches to economic development. The program, authorized by the Omnibus Budget Reconciliation Act of 1993, essentially provides tax incentives and relief to businesses to stimulate the economies of the designated areas and has a special emphasis on creating new jobs.[106] Specifically, a community that is designated as an empowerment zone is required to submit a strategic plan detailing its goals and its plans for attaining those goals with funding assistance from the program. Each empowerment zone or enterprise community is required to include all segments of the community—public, private, and nonprofit as well as federal, state, and local governments—in its comprehensive plan, which must include detailed benchmarks for achievement, timelines, and continuous, ongoing reviews. Administration and oversight of each of the rural community's or zone's programs is provided by the Department of Health and Human Services, the individual states, and the Department of Agriculture, which also is responsible for program evaluations and technical assistance.

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[99] Ibid.

[100] Ibid.

[101] Tommy Hart Testimony, Hearing Transcript, p. 444.

[102] Harry J. Bowie, president and chief executive officer, the Delta Foundation, telephone interview, Oct. 12, 1995.

[103] Ibid.

[104] Ibid.

[105] Ibid.

[106] P.L. 103-66, Aug. 10, 1993. The program established nine empowerment zones—six urban and three rural. Each of the six urban areas—Atlanta, Baltimore, Chicago, Detroit, New York, and Philadelphia-Camden, NJ—were awarded $100 million in grants and $150 million to $250 million in tax incentives. The rural empowerment zone areas—the Kentucky Highlands, Mid-Delta in Mississippi, and the Rio Grande Valley in Texas—were given $40 million in grants and $150 to $250 million each in tax incentives. The program also established 95 enterprise communities—65 urban and 30 rural—which were to receive grants and tax incentives of approximately $6 million. Also created under the act were two supplemental empowerment zones in Los Angeles and Cleveland. *See also* Richard Cowden and Ruth Knack, "Power to the Zones: HUD Offers a New Twist on an Old Standby; Housing & Urban Development Department, Empowerment Zones and Enterprise Communities"; includes related article, "American Planning Association," February 1995, p. 8.

The Mid-Delta Empowerment Zone is governed by the Mid-Delta Empowerment Zone Alliance Commission, a coalition of representatives from many local organizations, including businesses, churches, and community groups. The commission, like many of the community-based self-help organizations working for economic revitalization of the region, is composed of representatives from the region's wealthiest citizens as well as its poor and is responsible for effecting the proposals in the program. Indeed, in January 1994, members of this coalition joined together to submit the application for the empowerment zone designation. Among this group were members of two major Delta organizations—the aforementioned predominately white, wealthy Delta Council and the biracial Delta Foundation.

According to a March 1997 U.S. General Accounting Office (GAO) report, the Mid-Delta zone's strategic plan is as follows:

> The EZ's strategic plan focuses on three themes: building community in the Mississippi Delta, increasing economic opportunity in Mississippi Delta communities, and sustaining community and economic development in Mississippi Delta communities. The EZ has 41 benchmarks.
>
> Specific projects for the EZ include the following:
>
> - expanding and strengthening businesses and industries by providing assistance in accessing capital, business and technical assistance, and marketing;
> - improving the quality and accessibility of health care by seeking to increase the number of doctors serving the Mid-Delta region;
> - improving race relations by creating a race relations council; and
> - promoting community beautification through the creation of a recycling program.[107]

However, the GAO, in the same report, found that the Mid-Delta zone, like many of the other rural enterprise communities and empowerment zones, has experienced difficulties in meeting its goals and establishing benchmarks. The report found that although all the programs had established the requisite organizational structures, several circumstances, including erroneous information to the programs from the U.S. Department of Agriculture; conflict between written and oral guidance provided by the Department of Health and Human Services; and incomplete progress reports had contributed to the programs' inability to meet expectations regarding their goals.

And criticism of the program does not end with the GAO report. According to the president of the National Black Chamber of Commerce, the empowerment zone concept is incapable of succeeding due to the nature of the program and the administration responsibility:

> Enterprise Zones, hundreds across the nation and none a success, were the precursor to empowerment zones. The failure of the former did not discourage the designers of the new venture . . . The Department of Housing and Urban Development (HUD) aka the House of Urban Decay, has proven itself to be incompetent at business development and economic development. The best business and job growth program at HUD has been its Section 3 initiative which is 29 years old and virtually ignored. How is it going to institute a new high-powered program when it ignores the best one it has? Of all the federal agencies, the Department of Agriculture is probably the most institutionally racist; as a result, Black farmers are an endangered species. Despite the above, guess who the main contributors to empowerment zones are? HUD and the U.S. Department of Agriculture . . . Why doesn't the Small Business Administration and the Dept. of Commerce oversee this program? Wouldn't that be logical?[108]

He also asserts that designation of the zones has not resulted in the creation of new businesses, particularly black-owned businesses, but merely has led to the migration of corporate giants to depressed areas in search of tax relief, e.g., Kmart to New York City.

> The key to business growth and job production is capital access. However, empowerment zones are

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[107] U.S. General Accounting Office, *Rural Development—New Approach to Empowering Communities Needs Refinement*, no. GAO.RCED-97-75 (Mar. 31, 1997).

[108] Harry C. Alford, "Why Empowerment Zones Just Aren't Working," *The Ethnic NewsWatch*, July 2, 1997, p. 13.

> based mainly on tax abatements. What good are tax abatements if there is no revenue or income to tax. The only businesses that will be attracted by tax breaks are viable, large businesses in pursuit of reinvestment . . . What does tax abatement mean to a business that has no start-up capital? . . . the problem that exists . . . no capital access . . . I'm still asking for an example of an empowerment zone that has produced a certifiable new Black-owned business that has in turn produced 40 new jobs. To date, it hasn't happened.[109]

More recently, in 1998 the federal government began a second round of empowerment zone initiatives, adding five rural and 15 urban zones, and also announced plans for a Delta Regional Commission to fulfill the goals set by the Lower Mississippi Delta Development Commission in the 1980s.[110]

One leading proponent of major changes in current governmental and fiscal policies recommends that public policy shift emphasis to investments as opposed to income maintenance and also concentrate on building assets, enterprise, and economies. According to Robert E. Friedman, author of *The Safety Net As Ladder*, by emphasizing job creation through enterprise development, with a special concern for approaches that help establish sustaining economies, policymakers in state and local governments, corporations, private foundations, labor unions, and community groups can design and implement innovative and effective economic development strategies.[111] Historically, governmental policies for the poor have concentrated on providing transfer payments and other income maintenance programs. However, some observers believe that this policy has not reduced poverty dependence; instead, it has resulted in institutionalized dependence, has stifled initiative, and has discouraged job creation. Friedman recommends that policies expand choices and treat programs for the poor as investments. This change in focus can be accomplished by encouraging and enabling training and work, and creating jobs, including entrepreneurial opportunities.

Friedman proposes five specific programmatic and policy changes.[112] First, he suggests the removal of all barriers to training, education, employment, and entrepreneurship that are embodied in the present system, e.g., loss of medical insurance and loss of eligibility for benefits. Next, he proposes that government support for recipients be maintained while recipients pursue self-sufficiency. Third, transfer payment recipients and investments should be coordinated and integrated with other investment programs. Fourth, he recommends that states experiment with new programs to the extent that they are allowed to do so in administrating transfer programs. Finally, he suggests that as states review and assess the results of their model programs, they seek congressional approval for more broad-based reforms.

Several witnesses at the Commission's hearing, the majority of whom were from national organizations, echoed Friedman's call for national policies encouraging asset building among the poor rather than the historic income maintenance policies. According to these witnesses, not only have income maintenance policies failed to eliminate the intergenerational poverty prevalent in the Delta and elsewhere but they have actually contributed to the perpetuation of the cycle of dependence and poverty:

> Economic development within this region requires that there be a holistic approach and recognition that wealth must be created. It must be diversified and it must remain with the affected area, turning over several times before leaving.[113]

> The paucity of assets held by residents in poor communities and the absence of asset-building policies and programs available to them are the greatest barriers to eliminating poverty and dependency. Our income maintenance systems are designed to help families and individuals with inadequate income to survive at or near poverty level. These systems are not designed to help people become economically self-sufficient and reduce the probability of intergenerational poverty . . . Economic development programs must begin to address the building of assets, not just providing jobs and increased income . . . The absence of savings, investable assets, property and homeown-

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[109] Ibid.

[110] Bartholomew Sullivan, "Official Pitches Clinton's Plan for Delta," *The Commercial Appeal*, Feb. 27, 1998, p. B1. Joe Gyan Jr., "Gore Announces Expansion of Economic Initiative," *The Advocate*, Apr. 17, 1998, p. A1.

[111] Robert E. Friedman, founder, chairman of the board, and director, West Office, the Corporation for Enterprise Development, telephone interview, June 18, 1996.

[112] Robert E. Friedman, *The Safety Net As Ladder* (Washington, DC: The Council of State Policy & Planning Agencies, 1988), pp. 132–34.

[113] Hawkins Testimony, Hearing Transcript, p. 334.

ership, business ownership, and properly timed investments and postsecondary education for the poor leave many families in poverty or on the verge of falling back into poverty.[114]

According to one witness, a federal proposal for Individual Development Accounts (IDAs) would help address the need for asset-building policies to eliminate the Delta's endemic poverty. Essentially, the IDAs would be funded by public and private moneys that would match the savings of low-income residents. The funds from these accounts would then be used solely for asset building, e.g., as down payments for home purchases, business start-up costs, and trust funds for postsecondary education for children and adults.[115]

Home purchases by low-income Delta residents, which was identified by witnesses as a primary means of accumulating assets and building wealth, could be increased if residents were assured equal opportunity in obtaining mortgage loans. The Home Mortgage Disclosure Act requires that lending institutions in metropolitan areas provide statistical data on the race of home mortgage applicants, and applications granted and denied. However, the act does not apply to rural areas. Imposing similar disclosure requirements on rural areas, according to one hearing witness, would help reveal and, hopefully, eliminate one of the impediments to better housing in the Delta—discriminatory home lending practices.[116] Finally, elimination of the current federal prohibition against borrowing money for a down payment to purchase a home, according to one witness, would not only result in better quality housing for impoverished Delta residents but also would lead to asset building for poor residents.[117]

The New Markets Initiative. From July 5 through July 8, 1999, President Clinton toured rural America to highlight his New Markets Initiative. A legislative proposal incorporating these initiatives was approved by Congress and enacted into law on December 21, 2000.[118] The program will use deferred-interest loans and other incentives to draw the private sector into making capital investments into economically distressed communities. One stop on the tour was Clarksdale, Mississippi, where the President promoted investment in the Mississippi Delta and Community Development Financial Institutions (CDFI).[119] On this trip, the President mobilized a large and broad array of private sector investments in untapped domestic markets.

The following are just a few of the significant new commitments the private and public sectors are making to America's New Market:

- First Union, Bank One, BellSouth, Bankers Trust, and others investing in Appalachia
- new commitments to 14 CDFIs around the country
- an announcement by a major financial institution about the creation of a new venture capital fund that will be targeted to underserved inner-city markets and that will make available several hundred million dollars in equity capital to small businesses
- commitments from dozens of companies to hire thousands of out-of-school youth and disadvantaged young people throughout the nation[120]

These new initiatives will expand on the federal programs that have been enacted over the past seven years.[121] While in Mississippi, President Clinton announced $15 million in new private investments in the Enterprise Corporation of the Delta and $500 million in equity from the Bank of America for business enterprises in low-income areas. Of that, $100 million will go into CDFI. Many other firms are pledging millions of dollars as well.[122]

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[114] Cicero Wilson Testimony, Hearing Transcript, pp. 341–42, 346.

[115] Ibid., p. 346. *See generally* Michael Sherraden, *Assets and the Poor, A New American Welfare Policy* (Armonk, NY: M.E. Sharpe, Inc., 1991), chap. 10, p. 220.

[116] Jacquelyn W. McCray Testimony, Hearing Transcript, p. 352.

[117] Hawkins Testimony, Hearing Transcript, pp. 338–39.

[118] P.L. 106-554.

[119] *See* World Wide Web <http://whitehouse.gov/WH/New/New_Markets/tripoverview.html>. Legislation creating the CDFI Fund was passed in 1994. The fund's goal, through grants, loans, and equity investments, is to create a network of community development financial institutions in distressed areas across the United States.

[120] *See* ibid.

[121] Ibid. These programs include the CDFI Fund and the empowerment zones; and the reformed Community Reinvestment Act, which provides for emphasis on performance.

[122] Charles Babington, "Desperation Despite a VIP Visit; After a Presidential Trip and Promises of Investment,

> Critics of the program come from both sides of the political spectrum. Laissez-faire capitalists believe government should let market forces take their course, and not try to promote private investment through various incentives. Lyndon Johnson Great Society types, on the other hand, think government needs to be more directly involved in providing economic resources to rural America. . . . Governments from Winnetka to Washington have used tax abatements, enterprise zones and low interest loans for years to direct private sector resources into areas where they are needed. The New Markets Initiative isn't really new. It's just a continuation of policies that already have been implemented elsewhere.[123]

In February 2000, an announcement by Firstar Corp. of a $100 million lending initiative in St. Louis was due in part to the New Markets Initiative agenda that has made it very profitable for companies to relocate or open businesses in depressed areas.[124] One important key to making sure the initiative is a success is that corporations adopt the attitude that African Americans in the region are worth investing in.[125] Across the country, urban neighborhoods such as North St. Louis have become the new meccas for real estate developers. According to *Black Enterprise* magazine, financial experts predict that real estate once abandoned in urban areas will be a $100 billion market:[126]

> If Firstar is sincere in its efforts to invest in North St. Louis, the results could be powerful. . . . St. Louis has a large and untapped pool of creative and capable black visionaries, but it has an equal share of naysayers and pessimists. Initiatives for lending institutions such as Firstar are long overdue.[127]

The President's July 1999 tour raised national awareness that despite our booming economy, many places are left far behind. The first message of the tour was that areas visited are examples of potentially new economic markets that can be developed to continue to fuel this nation's economic engine.[128] The other message of the tour was that our nation is not based on common race or religion, but on the simple premise of opportunity for all; not guaranteed outcomes, but an equal playing field of opportunity.[129]

As of April 2000, both the White House and the GOP have legislation pending regarding the future of poor rural and urban communities. The White House's proposal is titled the New Markets Initiative, and the GOP bill is called the American Community Renewal Act.[130] The plans put forward are similar is some respects, including reliance on tax credits and breaks rather than government spending on new programs. The question is what to do about the issues on which the two disagree.[131] There is a suggestion on the table to give one set of communities benefits of the GOP plan and another group benefits from the White House model. Then, after seven to eight years, the benefits from each plan would expire, and Congress could determine which one worked better.[132]

Historically, Republicans and Democrats have approached poverty differently; however, the two current proposals are driven by the same basic philosophy: using tax incentives to attract businesses to neglected areas rather than funding new government programs to help those who live there. Reports in May 2000 stated both sides were optimistic that the final wrinkles would be worked out and an agreement reached in 2000.[133]

ECONOMIC OPPORTUNITY, AGRICULTURE, AND BLACK DELTA FARMERS

> For more than 100 years—and particularly during the past 30 years—the U.S. Department of Agriculture has administered federally funded programs designed to improve almost every aspect of the lives of low-income farm and rural families. . . . As the group most depressed economically, most deprived educationally, and most oppressed socially, Negroes have been consistently denied access to many [agricultural] ser-

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Tough Work Remains for Hard-Pressed Communities," *The Washington Post*, July 7, 1999, p. A2.

[123] "Cities Not Alone in Needing Help; Clinton Correct to Look to Hinterlands," *The Sun-Sentinel* (Fort Lauderdale), July 10, 1999, p. A14.

[124] Sylvester Brown, "Black Entrepreneurs Need to Use New Loan Fund and Believe in Themselves," *The St. Louis Post-Dispatch*, Feb. 29, 2000, p. B15.

[125] Ibid.

[126] Ibid.

[127] Ibid.

[128] Andrew Cuomo, "The Trip Into Poverty," *The Washington Post*, July 11, 1999, p. B7.

[129] Ibid.

[130] Deirdre Shesgreen, "White House and GOP Cooperate to Help Revive Poor Communities," *The St. Louis Post-Dispatch*, Apr. 30, 2000, p. A9.

[131] Ibid. (discussing the differences in the two proposals).

[132] Ibid.

[133] Ibid.

vices, provided with inferior services when served, and segregated in federally financed agricultural programs whose very task was to raise their standard of living.[134]

When Virginia tobacco farmer John Boyd was denied a Federal farm operating loan in 1990, his eighth rejection in nine years came as no surprise. What shocked Boyd was the way a county [USDA] official threw his application in the trash right in front of him.[135] "I got my mule," said Boyd, a farmer from Baskerville, Va., who is president of the National Black Farmers Association. "I need my 40 acres."[136]

In recent years, the nation has begun to refocus its attention on the marked decrease in black-owned farms across the country.[137] However, the saga of discriminatory treatment and disturbing economic adversities that black farmers encounter is not a new story. Timothy Pigford, one such North Carolina farmer, related his experience with USDA inspectors in the 1950s:

> [F]armers [from Willard, North Carolina] would load their tobacco and drive to the warehouse in Whiteville [North Carolina], 50 miles away. . . . White warehouse owners seemed fair, he recalls, but black farmers distrusted USDA inspectors, who graded tobacco before the auctioneer came. "We'd unload real early in the morning, then stand way off to the other side of the warehouse, or a white farmer would let us stand with him so that the graders would think we were hired hands. They'd downgrade our tobacco if they knew we were black."[138]

In 1965, the U.S. Commission on Civil Rights (the Commission) noted that African Americans who live in southern rural areas experience greater economic hardships than their rural white neighbors.[139] Later, in *The Decline of Black Farming in America*, the Commission noted that in 1978 "the rate of [farm] land loss for blacks increased to 57.3 percent, 2½ times the rate of loss for whites."[140] It was further recognized that African Americans operated only 57,271 farms in the United States.[141] Specifically, *The Decline of Black Farming in America* indicated that "blacks represent[ed] only 5.6 percent of the South's farmers. About 85 percent of all black farmers are located in the South. The largest numbers are in Mississippi, North Carolina, South Carolina, Texas, Alabama, Georgia, Virginia, Louisiana, Tennessee, and Florida."[142]

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[134] U.S. Commission on Civil Rights, *Equal Opportunity in Farm Programs: An Appraisal of Services Rendered by Agencies of the United States Department of Agriculture*, 1965, pp. 99–100 (hereafter cited as USCCR, *Equal Opportunity in Farm Programs*).

[135] John Springer, "Black Farmers Group Supports Settlement," *The Hartford Courant*, Nov. 23, 1998, p. B7 (hereafter cited as Springer, "Black Farmers Group.")

[136] "Black Farmers March on Capitol to Highlight Discrimination," (visited Mar. 20, 1998) <http://www.gocarolinas.com/wsoctv/news/1998/3/5/wblack.html>. "John Boyd led his mule named 'Struggle' up Pennsylvania Avenue on Thursday in a small march of black farmers who say the Clinton administration is failing to address their claims of discrimination despite its supposed focus on improved race relations. . . . The march of about 250 farmers from the federal courthouse to the Capitol followed a hearing at which U.S. District Judge Paul Friedman set a Feb. [1, 1999] trial date for a $2 billion lawsuit filed by 350 farmers, including some North Carolinians, hoping to force action on their complaints." Ibid.

[137] *See generally* Michael Fletcher, "Bias—A Perennial Crop for Black Farmers," *The Washington Post*, Dec. 11, 1996, p. A1.

[138] Edward Martin, "For the Land's Sake—Class Action Case against Federal Lending Policies Discriminating Against African American Farmers," *Business North Carolina*, vol. 18 (November 1998), p. 52.

[139] USCCR, *Equal Opportunity in Farm Programs*, p. 99. The report's findings were based on information obtained from staff field visits to USDA state and county offices in 22 counties of eight Southern states (Alabama, Arkansas, Georgia, Mississippi, Louisiana, North Carolina, South Carolina, and Virginia). Ibid., p. 2.

[140] U.S. Commission on Civil Rights, *The Decline of Black Farming in America*, 1982, p. 2 (hereafter cited as USCCR, *The Decline of Black Farming*).

[141] Ibid., p. 1. The Commission cited to 1978 Bureau of Census agricultural data that classified "farm operators" as full owners, "part owners (who operate leased land as well as their own farms) and tenants." Ibid. *See generally* Jim Chen, "Of Agriculture's First Disobedience and its Fruit," *Vanderbilt Law Review*, vol. 48 (1995), p. 1261. "Jim Crow's creed of racial relations in the South rested on the assumption that white America could confine the descendants of African slaves to the South. But massive resistance to wage-and-hour regulations of agricultural labor eliminated whatever economic advantage that Southern blacks might have kept by working farm related jobs instead of seeking industrial employment opportunities in other regions. Under any economic conditions, the prevailing nonfarm wage rate is the opportunity cost implicit in any decision to perform an equivalent on-farm task. After the New Deal, that wage was no less than the legal minimum wage in any industry covered by the . . . [Fair Labor Standards Act, 29 U.S.C. § 213(a)(6) (1988)], and wartime economic expansion yielded a bumper crop of nonagricultural jobs not foreseen during the Great Depression. The jobs were there, the wages were better, and black America was ready to move." Ibid., p. 1305.

[142] USCCR, *The Decline of Black Farming*, p. 45. The states are listed in descending order of number of black farmers.

A 1995 estimate of the number of black-owned farms in Mississippi revealed that there were approximately 2,500. These farms were primarily located in the Delta region in the northwest quarter of the state.[143] Similarly, this estimate indicated that the number of black-owned farms in this region also decreased almost 50 percent from 1982 to 1992.[144]

The rapid decline in the number of black-owned farms throughout the United States, particularly in the Mississippi Delta, continues to occur in spite of or due to intervening efforts from various sources. This chapter will provide an overview of the U.S. Department of Agriculture (USDA)'s contribution of providing economic support and technical assistance to the nation's farmers and its civil rights enforcement obligations, as well as a discussion of various factors that contribute to the decreasing number of black-owned farms in the Mississippi Delta.

USDA's Role in Civil Rights Enforcement and Economic and Technical Support

The passage of Title VI of the Civil Rights Act of 1964[145] provided that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[146]

The Commission has long held that federal civil rights agencies have the duty to "demolish the lingering barriers to full participation faced by minorities" in all federally funded programs.[147] Every federal agency is required to enforce nondiscriminatory practices for its financial assistance programs. This responsibility includes the "investigation and handling of complaints of discrimination and imposition of sanctions, as well as proactive obligations to ensure continuing compliance with Title VI and adequate understanding of its rights and responsibilities."[148]

The USDA administers federal agricultural programs through the civil rights office or division of the following 14 agencies: the Agricultural Cooperative Service, the Agricultural Marketing Service, the Agricultural Research Service, the Agricultural Stabilization and Conservation Services, the Cooperative State Research Service, the Extension Service, the Federal Crop Insurance Corporation, the Farmers Home Administration, the Food and Nutrition Service, the Forest Service, the Food Safety and Inspection Service, the Office of International Cooperation and Development, the Soil Conservation Service, and the Foreign Agricultural Service.[149] In order to operate their programs, each of these agencies is responsible for enforcing Title VI and other applicable civil rights laws.[150] An overall USDA civil rights office, the Office of Civil Rights Enforcement (OCRE), is charged with monitoring, coordinating, and evaluating each

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See also Adell Brown Jr., Ralph D. Christy, and Tesfa G. Gebremedhin, "Structural Changes in U.S. Agriculture: Implications for African American Farmers," *The Review of Black Political Economy*, Spring 1994, p. 52 (hereafter cited as Brown, Christy, and Gebremedhin, "Structural Changes"). "About two-thirds of the farms operated by African Americans in the United States comprise less than fifty acres and sell less than $20,000 of farm products annually. Yet over half of these farmers report farming as their principal occupation and most are over fifty-five years old, educationally disadvantaged, economically poor, and may face institutional barriers (i.e., access to credit, input, and product markets." Ibid., p. 52.

[143] Adam Nossiter, "A Threat to Minority Aid Worries Black Farmers," *The New York Times*, Nov. 28, 1995, p. A20.

[144] Ibid.; *see also* U.S. Department of Agriculture, Civil Rights Action Team, *Civil Rights at the United States Department of Agriculture*, February 1997, p. 3 (hereafter cited as USDA/CRAT, *Civil Rights*), p. 14. "According to the most recent Census of Agriculture, the number of all minority farms has fallen . . . from 950,000 in 1920 to around 60,000 in 1992. For African Americans, the number fell from 925,000, 14% of all farms in 1920 to only 18,000, 1% of all farms in 1992." Ibid., p. 14.

[145] Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

[146] 42 U.S.C. § 2000d (1994); *see also* U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974: To Extend Federal Financial Assistance*, vol. 6 (November 1975), p. 3. "Title VI is the broadest instrument available for the nationwide elimination of invidious discrimination and the effects of discrimination on the basis of race or national origin." Ibid., p. 3.

[147] U.S. Commission on Civil Rights, *Federal Civil Rights Commitments and Assessments of Enforcement Resources and Performance*, November 1983, p. 2.

[148] U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, p. 14 (hereafter cited as USCCR, *Federal Title VI Enforcement*).

[149] Ibid., p. 250.

[150] Ibid.

agency's civil rights activities.[151] However, each of these USDA agencies determines its own procedures and instructions for implementing Title VI and other civil rights policies.[152]

One of these agencies, the Farmers Home Administration (FmHA) serves an essential function of providing credit assistance to farmers and rural residents through a number of grant and loan programs.[153] FmHA administers to eligible participants federally assisted programs, such as farm ownership loans, private enterprise grants for improving and protecting farmland for conservation initiatives, and rural housing site loans for private or public nonprofit organizations for housing in rural areas.[154]

The Equal Opportunity Staff (EOS) in Washington, D.C., is FmHA's civil rights and equal employment opportunity office. EOS is divided into two divisions: the Equal Employment Opportunity Branch and the Equal Opportunity Program Compliance Branch.[155] The Equal Employment Opportunity Branch is responsible for FmHA's internal civil rights responsibilities of providing special emphasis programs and handling the agency's internal Title VII complaints.[156] The Equal Opportunity Program Compliance Branch is responsible for external and internal civil rights enforcement of regulations by processing external program complaints, responding to OCRE's requests, and monitoring FmHA's state and local civil rights compliance program activities.[157]

Land Grant Programs

In 1862, the First Morrill Act[158] created a novel opportunity to provide federal funding to each state for public higher education.[159] Ultimately, the Morrill Act would be the catalyst for future agricultural initiatives on land grant public colleges that offered a useful curriculum for the working class.[160] The act provided that each state would receive 30,000 acres of land for each one of its senators or congressional representatives. After this property was sold, income from the sale would be used to support each state's agricultural college or colleges.[161] According to the provisions in the act, a perpetual fund would grant:

> at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts . . . in order to promote the liberal

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[151] Ibid. "OCRE monitors, coordinates, and evaluates agency heads' efforts to enforce Title VI and other related laws and regulations by conducting audits, onsite field reviews, or compliance reviews to determine the degree of compliance and enforcement." Ibid., p. 253.

[152] Ibid.

[153] USCCR, *Federal Title VI Enforcement*, p. 292.

[154] Ibid., pp. 292–94. Some of the other programs include grazing association loans for conservation purposes, soil and water conservation and pollution abatement loans, and water and waste facility loans and grants for water resource development and pollution control. *See also* ibid., pp. 300–01. "The Acting Director of EOS told the [U.S.] Commission [on Civil Rights] that the current civil rights structure at USDA (one umbrella civil rights office and individual agency civil rights offices) is adequate. However she stressed that USDA's civil rights office should report directly to the Secretary of the USDA or the USDA should have an assistant secretary for civil rights at the Department. She also said that more interaction between agency heads' civil rights offices and OCRE is necessary." Ibid., pp. 300–01.

[155] Ibid., p. 295.

[156] Ibid.

[157] Ibid. Some of the civil rights regulations include: Title VI, Title IX, the Age Discrimination Act, section 504 of the Rehabilitation Act, the Equal Credit Opportunity Act, and Title VIII of the Fair Housing Act.

[158] Ch. 130, § 4, 12 Stat. 503, 504 (1862) (codified as amended at 7 U.S.C. §§ 301–308 (1994)).

[159] USCCR, *Equal Opportunity in Farm Programs*, p. 19. In 1862, Congress also created the U.S. Department of Agriculture in order to obtain and disseminate information on new methods of farming. Land grant colleges were established to teach agriculture and mechanic arts.

[160] *See* Gil Kujovich, "Equal Opportunity in Higher Education and the Black Public College: The Era of Separate But Equal," *Minnesota Law Review*, vol. 72 (1987) pp. 29, 41–42 (hereafter cited as Kujovich, "Equal Opportunity in Higher Education"); *see also* Donald E. Voth, "A Brief History and Assessment of Federal Rural Development Programs and Policies," *Memphis State University Law Review*, vol. 25 (1995), p. 1270 (citing the remarks of Professor George McDowell of Virginia Polytechnic Institute and State University, Department of Agriculture and Applied Economics, before a conference in 1991 on the future of the USDA and the land grant system: "[T]he Land-Grant colleges were not originally agricultural colleges, but people's colleges, though many of the people without access to college were engaged in agriculture. They were to make our democracy better by providing higher education to the sons and daughters of ordinary citizens. . . . For the first time in history, the problems of ordinary people were the subject of scholarship and science. The scholarly agenda was democratized—the development of the Babcock milk test was both a scientific act and a political act.") Ibid., p. 1270.

[161] 7 U.S.C. §§ 301–308 (1994).

> and practical education of the industrial classes in the several pursuits and professions in life.[162]

Despite the First Morrill Act's effect of providing an opportunity to educate rural Americans on agricultural and scientific advancements, in the 17 segregationist states, whites primarily benefited from its existence.[163] Subsequently in the 1870s, only Mississippi, Virginia, and South Carolina distributed land grant funding to black colleges.[164]

Also during this time, land grant colleges began using agricultural experiment stations to examine and solve serious farming problems such as soil erosion and the lack of technical knowledge relating to fertilizers.[165] Accordingly, Congress enacted the Hatch Act[166] in 1887, to encourage the use of employing scientific approaches in solving agricultural problems.

> This act made annual appropriations to the "college or colleges" established under the First Morrill Act, "or any of the supplements to the Act, in each state for the purpose of setting up agricultural experiment stations." The Hatch Act recites that "in any State . . . in which two such colleges have been or may be so established the appropriation . . . made to such States shall be equally divided between such colleges *unless* the legislature of such State . . . shall otherwise direct.[167]

However, black farmers in the South often did not benefit from the passage of the Hatch Act. While the Alabama Legislature did designate state tax revenue for agricultural experiment stations at Tuskegee Institute and the Alabama State Normal School for Negroes in Montgomery, it is reported that neither of these institutions was ever identified to receive Hatch Act resources.[168]

The passage of the Agricultural College Act of 1890 (the Second Morrill Act)[169] in 1890 further acknowledged the reality of segregation in higher education, by providing that states with two systems of education equally divide their land grant funds between black and white institutions.[170] The Second Morrill Act mandated that "no money shall be paid for the support of a college where a distinction of race or color is made in the admission of students."[171] Concomitantly, Congress defended the federal government's support of the doctrine of "separate but equal" in public education.[172] Despite this constraint, the Second Morrill Act eventually created at least one black public college in each of the segregationist states.[173] However, these land grant colleges were often constrained by technical staff who had limited advanced training, minimal federal and local financial assistance, and little, if any, direct research support.[174] As a result, black farmers often received inferior agricultural support services.

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[162] 7 U.S.C. § 304 (1994).

[163] Kujovich, "Equal Opportunity in Higher Education," p. 42. "The southern and border states referred to . . . are the 17 states that maintained a rigid system of segregation in public higher education during the separate but equal era: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia." Ibid., p. 30, n. 1.

[164] Ibid., p. 42. "In 1871 the black-controlled legislature of Mississippi created Alcorn University for the education of black students and provided that Alcorn would receive three-fifths of the annual income from the federal land grant, with the remainder for the University of Mississippi. Beginning in 1878 the annual income was divided equally between the two institutions. . . . Virginia provided for an equal division of the annual income, with half going to Hampton Normal and Agricultural Institute. . . . In 1872 the black-controlled South Carolina legislature designated Claflin University, a private black college, as the state's land grant institution. In 1889 after whites had regained control of the legislature, the income was divided equally between Claflin and the newly created Clemson Agricultural College for whites. In 1896 the legislature established the Colored Normal, Industrial and Agricultural College of South Carolina and provided for the equal division of the income between that institution and Clemson. The black school was subsequently renamed the State Agricultural and Mechanical College." Ibid., p. 42, nn. 45–47 (internal cites omitted). *Cf.* USCCR, *Equal Opportunity in Farm Programs*, p. 19. Trains were used as mobile classrooms to bring information of agricultural advancements from the land grant colleges to the farmers.

[165] Knight v. Alabama, 787 F. Supp. 1030, 1146 (N.D. Ala. 1991) (*aff'd* in part, *rev'd* in part, *vacated* in part, Knight v. Alabama, 14 F.3d 1534 (11th Cir. 1994)). In 1883, the Alabama State Legislature established Alabama's first agricultural experiment station at Auburn University, which did not admit black students. One year later, the Legislature passed a law that provided a fertilizer tax which appropriated one-third of these funds to the Auburn experiment station. *Id.*

[166] Ch. 314, 24 Stat. 440 (1887) (codified as amended at 7 U.S.C. § 361a–i (1994)).

[167] *Knight*, 787 F. Supp. at 1146 (stipulations of fact (citing the Hatch Act) (emphasis in original)). "When the Hatch Act was passed, the southern states (except for Mississippi, South Carolina and Virginia) had designated only white institutions as land grant colleges." *Id.* at 1146 (stipulations of fact).

[168] *Id.* at 1146 (stipulations of fact). "The branch experiment station at Tuskegee would provide limited benefits to black farmers. It did not, however, conduct the kind of scientific work done by the experiment stations under the control of Auburn [University]. . . . The station at Tuskegee was placed under an all-white board of control and was eventually made a branch station of [Auburn University]." *Id.* at 1146–47; *see* Kujovich, "Equal Opportunity in Higher Education," p. 61. The author indicated that by the 1930s, West Virginia State College was the sole black land grant college that received Hatch Act funds for its experiment station. The college received only $1,800 of the millions of federal research funds that had been allocated to the segregationist states.

[169] Ch. 841, 26 Stat. 417 (1890) (codified as amended at 7 U.S.C. § 321 (1994)).

[170] 7 U.S.C. § 323 (1994). A'Lelia Robinson Henry, "Perpetuating Inequality: *Plessy v. Ferguson* and the Dilemma of

Cooperative Extension Service

Dr. Bob Robinson, administrator of USDA's Cooperative State Research, Education, and Extension Service, testified before the House Agriculture Committee's Forestry, Resource Conservation and Research Subcommittee on the importance of the Cooperative Extension Service (CES) to rural communities. He observed:

> The value-added of the Cooperative Extension Service is its ability to design, develop, and deliver educational programs that meet the unique needs of local people as they adjust to change. In every State, the number and type of educational programs are determined largely by land grant university extension faculty working with stakeholders to solve their problems and take advantage of opportunities associated with scientific and technical advances and major changes in the agricultural sector.[175]

The benefits of CES have not continually been extended to all Americans who needed its resources. The history of USDA's Cooperative Extension Service began as a result of the enactment of the Smith-Lever Act[176] in 1914.[177] The purpose of the act was to benefit individuals in rural areas who did not have immediate access to the agricultural advancements at the land grant colleges.[178] The act provided that:

> In order to aid in diffusing among the people of the United States useful and practical information on subjects relating to agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy, and to encourage the application of the same, there may be continued or inaugurated in connection with the college or colleges in each State, Territory, or possession, now receiving, or which may hereafter receive, the benefits of . . . [the First and Second Morrill Acts], agricultural extension work which shall be carried on in cooperation with the United States Department of Agriculture: *Provided*, that in any State, Territory, or possession in which two or more such colleges have been or hereafter may be established, the appropriations hereinafter made to such State, Territory, or possession shall be administered by such college or colleges as the legislature of such State, Territory or possession may direct.[179]

The act's proviso allowed state legislatures to determine which land grant college should receive Smith-Lever funding. In the event that there were two or more eligible institutions, it served to further exclude African Americans in the South during this time.[180] Specifically, the

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Black Access to Public and Higher Education," *Journal of Law and Education*, vol. 27 (January 1998), pp. 48–49.

[171] Ch. 841, 26 Stat. 417 (1890) (codified at 7 U.S.C. § 323 (1994)).

[172] Kujovich, "Equal Opportunity in Higher Education," p. 43. "[T]he establishment and maintenance of such colleges separately for white and colored students shall be held to be a compliance with the provisions of this act if the funds . . . be equitably divided." Ibid., p. 42 (citing §§ 1, 26 Stat. 417, 418 (1890)).

[173] Ibid., p. 43.

[174] Brown, Christy, and Gebremedhin, "Structural Changes," p. 65; Kujovich, "Equal Opportunity in Higher Education," pp. 43–51; *see also Knight*, 787 F. Supp. at 1052. In this case, the plaintiffs contended *inter alia* that "AAMU [Alabama A&M University] was designated Alabama's black land grant university in 1890, but it received no state funding for land grant functions until 1982, when small appropriations began, and the state continues to this day denying AAMU any share of federal funds proceeding from the . . . Morrill Land Grant Act, the . . . Hatch Act . . . and the . . . Smith Lever Act. As a result, black farmers were forced off the land in disproportionate numbers." *Id.*

[175] Dr. Bob Robinson, administrator, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, prepared statement, *Hearing Before the House Agriculture Committee, Forestry, Resource Conservation, and Research Subcommittee*, Federal News Service, July 9, 1997 (hereafter cited as Robinson, *House Agriculture Committee Hearing*).

[176] Ch. 79, 38 Stat. 372 (1914) (codified as amended as 7 U.S.C. §§ 341–349 (1994)).

[177] *See* USCCR, *Equal Opportunity in Farm Programs*, p. 19. The CES serves as the educational component of the USDA.

[178] *Knight*, 787 F. Supp. at 1147.

[179] 7 U.S.C. § 341 (1994) (emphasis in original).

[180] *Knight*, 787 F. Supp. at 1148–52; Kujovich, "Equal Opportunity in Higher Education," p. 54; *see also Knight*, 787 F. Supp. at 1168. "There are sixteen states which have designated '1890' [Second Morrill Act land grant] institutions. Those sixteen states are: Alabama, Georgia, Florida, North

legislatures of all 17 segregationist states allocated their white land grant colleges to receive Smith-Lever funds, which ultimately prevented black educational institutions and African American farmers from obtaining the full benefits of agricultural advancements that resulted from this program.[181]

The county extension office served as the link between land grant colleges and local citizens in need of its services. County extension offices were staffed by "farm or county agents" who administered and planned the extension program.[182] As southern extension services eventually employed African American county agents, they were most frequently assigned to black land grant colleges or to counties with 450 or more black farm families.[183] Black county agents were often hindered by lack of teaching materials and demonstration equipment, limited travel funds, inadequate office space, and support.[184] USDA estimates for 1925 to 1942 revealed that:

> when the rural population of the segregationist states was approximately one-fourth black, annual extension expenditures for the benefit of the black population did not exceed seven percent of total expenditures. In practice, the extension program in the black community was usually limited to the services provided by black agents.[185]

Generally, the Federal Extension Service provides the Cooperative Extension Service's administrative structure, which trains state extension workers and evaluates agricultural programs.[186] In 1965, the Commission documented that extension work at the state level continued to be provided in a segregated manner by separate staffs.[187] During that time,

> [i]n an Alabama county the Negro [extension services] agent stated to Commission interviewers that Negroes did not attend demonstrations held on white farms and that there were beef cattle demonstrations for white farmers but none for Negroes. . . . In another Alabama county, specialists met with white farmers while the Negro agent reported that Negro farmers did not receive the services of specialists. Another Negro agent said he learned, through conversations with white livestock producers and newspapers, about a fertility testing program for bulls which was available to white farmers but not to Negroes.[188]

More recent reports relating to USDA's administrative structure indicate that the Cooperative Extension Service was merged with the Cooperative State Research Service in 1994, in order to form the Cooperative State Research, Education, and Extension Service (CSREES) and to improve the accessibility of agricultural advancements to serve a more diverse audience.[189]

> The mission of CSREES is to achieve significant and equitable improvements in domestic and global eco-

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Carolina, South Carolina, Virginia, Kentucky, Tennessee, Mississippi, Louisiana, Arkansas, Oklahoma, Texas, Missouri, Maryland, and Delaware. In each of the 16 states with 1890 institutions, the statewide agricultural experiment station, and the statewide cooperative extension service, are under the exclusive administrative supervision and control of each state's 1862 [First Morrill Act] land grant institution." *Id.* at 1168.

[181] Kujovich, "Equal Opportunity in Higher Education," pp. 54–55.

[182] Ibid., p. 56. The county extension office was also staffed by home demonstration and youth agricultural club agents.

[183] USCCR, *Equal Opportunity in Farm Programs*, p. 20; Kujovich, "Equal Opportunity in Higher Education," p. 56.

[184] Kujovich, "Equal Opportunity in Higher Education," pp. 56–57. The author noted that while white extension workers received federal, state, and county funds for their agricultural extension activities, black agents used their limited wages to pay for support services. *See also* Wade v. Mississippi Cooperative Extension Serv., 528 F.2d 508, 515 (1976). The United States Court of Appeals for the Fifth Circuit affirmed the district court's findings that Mississippi State University's Mississippi Cooperative Extension Service had subjected black county agents and workers to employment discrimination.

[185] Kujovich, "Equal Opportunity in Higher Education," p. 58. "Most white agents . . . found that their own responsibility to serve the white community and other considerations precluded much assistance to the black agent." Ibid., p. 58, n. 119 (citing W. Truehart, "The Consequences of Federal and State Resource Allocation and Development Policies for Traditionally Black Land-Grant Institutions: 1862–1954" (Ed.D thesis, Harvard University)).

[186] USCCR, *Equal Opportunity in Farm Programs*, p. 20. The State extension service is represented "as a unit of the land-grant colleges [that] operates with the advice and assistance of the Federal Extension Service. It is responsible for supervising and directing all extension work in the State as well as for formulating and organizing statewide programs. . . . The state extension services have developed cooperative financing and administration with the county governments." Ibid., p. 21.

[187] Ibid., p. 23.

[188] Ibid., p. 46. *Cf.* ibid., p. 48, regarding the establishment of lower production goals for black farmers; Deborah M. Clubb, "Glickman Hears Cries of Racism from Area Farmers," *The Commercial Appeal*, Jan. 8, 1997, p. A1 (hereafter cited as Clubb, "Glickman Hears"). "Robert Elliott of Gibson County, Tenn., said he worked with the University of Tennessee Extension Service 20 years and was nearly fired when he complained about racial slurs he heard from local farm officials." Ibid.

[189] Robinson, *House Agriculture Committee Hearing*.

nomic, environmental, and social conditions by advancing creative and integrated research, education, and extension programs in food, agricultural, and related sciences in partnership with both the public and private sectors. The partnership includes CES and 103 Land Grant institutions. This partnership links the education and research resources of the U.S. Department of Agriculture and the land-grant universities with 3,150 county and administrative units throughout the country. CSREES is a Federal partner in a partnership that also includes the 59 State and Territorial Agricultural Experiment Stations; the 17 1890 land grant institutions, including Tuskegee University; the 63 Forestry Schools; the 27 Colleges of Veterinary Medicine . . . and the 29 Native American Institutions, which now have land-grant status.[190]

Farmers Home Administration

One of USDA's agencies, the Farmers Home Administration, was intended to serve as a major financial lending source to limited-resource and low-income farmers.[191] In 1946, Congress combined the Farm Service Agency and the Emergency Crop and Feed Loan Programs into the newly created Farmers Home Administration, giving FmHA the authority to insure loans made by banks, other agencies, and private individuals, in addition to making direct government loans.[192]

During this same year, the Secretary of Agriculture was also authorized to issue production and subsistence loans, which replaced former emergency and rural rehabilitation loans to farmers who could not obtain credit.[193] Subsequent legislation gave FmHA the additional authority to provide loans for individual rural homeownership, rental home construction, home repairs, water and waste disposal systems, and community facilities.[194] In fiscal year 1983, a USDA Task Force on Black Farm Ownership prompted the creation of the Small Farmer Training and Technical Assistance Program (SFTTAP).[195] The primary objective of this program was to assist minority farmers by creating cooperative agreements between FmHA and historically black colleges.[196] Specifically, "the program's technical assistance plan consisted of demonstrations of farming techniques, farm management practices, development of farm plans, and assistance to farmers with obtaining loans."[197]

The Outreach and Assistance Grants for Socially Disadvantaged Farmers and Ranchers Program is another component of the SFTTAP.[198] The Outreach and Assistance Grants Program encouraged the creation of cooperative agreements with the 1890 and 1862 Land Grant Institutions, Native American community colleges, various community organizations, and Hispanic Servicing Institutions to support economically disadvantaged farmers.[199]

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[190] Ibid.

[191] H.R. REP. NO. 95-986, 95th Cong., 2nd Sess., reprinted in 1978 U.S.C.CA.N. 1106, 1121; USCCR, *The Decline of Black Farming*, p. 72; *see* ibid., p. 50. "Most significant is the competitive disadvantage faced by black farmers due to the relatively small size of their landholdings. While the average commercial black-operated farm in the South [in 1978 was] 128 acres, the average white-operated farm . . . [was] more than three times that size—428 acres. The relatively small size of their landholdings combine with current economic conditions, governmental policies, and institutional practices to place black farmers at a competitive disadvantage with large operators and investors, most of whom are white." Ibid. *See generally* Court's Opinion on Plaintiff's Motion for Class Certification, Pigford v. Glickman, Civil Action No. 97-1978, 1998 U.S. Dist. LEXIS 16299, at *1 (D.D.C. 1998). "Until 1994, the USDA operated two separate programs that provided . . . price support loans, disaster payments, 'farm ownership' loans and operating loans: the Agricultural Stabilization and Conservation Service (ASCS) and the Farmers Home Administration. . . . In 1994, the functions of the ASCS and the FMHA were consolidated into one newly-created entity, the Farm Service Agency [FSA] . . ." *Id.* at *3.

[192] USCCR, *The Decline of Black Farming*, p. 74.

[193] Wayne D. Rasmussen, "New Deal Agricultural Policies After Fifty Years," *Minnesota Law Review*, vol. 68 (1983), p. 367.

[194] USCCR, *The Decline of Black Farming*, p. 74; USCCR, *Federal Title VI Enforcement*, pp. 292–94. In 1992, FmHA issued $6.8 billion to 87,000 recipients, which included state and local agencies, independent farmers and ranchers, tenants, and profit and nonprofit organizations. Ibid., p. 292.

[195] John Just-Buddy, chief, Economic Enhancement Branch, Farm Service Agency, U.S. Department of Agriculture, telephone interview, Feb. 29, 1996 (hereafter cited as Just-Buddy Interview, Feb. 29, 1996).

[196] Ibid.

[197] John Just-Buddy, chief, Economic Enhancement Branch/ formerly acting director of special programs, Farm Service Agency, U.S. Department of Agriculture, telephone interview, June 25, 1996 (hereafter cited as Just-Buddy Interview). The SFTTAP was originally known as the 1987 Agricultural Credit Act. The program was part of FmHA's response to former President Ronald Reagan's Executive Order 12320, which supported historically black colleges and universities. The 1985 farm bill did not allocate funding for this program. The USDA ultimately used part of its operating funds for salaries and expenses to support the Small Farmer Training and Assistance Program. Just-Buddy Interview, Feb. 29, 1996. *See also* Just-Buddy Interview. "In an October 1995 [USDA] . . . reorganization, the Agricultural Stabilization and Conservation Services [ASCS] and the Farm Credit Program from . . . FmHA were combined to form the Farm Service Agency . . ." Ibid. According to Mr. Just-Buddy, ASCS had a history of not working well with minority citizens; "[N]ationwide [ASCS] had only one or two blacks on its county committees which [made] decisions regarding loans to farmers." Ibid.

[198] Just-Buddy Interview.

Lending Difficulties and Loan Debt

One extension program that serves SFTTAP participants is located at Alcorn State University in Lorman, Mississippi. According to Dr. Jesse Harness, associate extension administrator and coordinator of civil rights and equal employment opportunity at Alcorn University, Alcorn's program assists borrowers in acquiring farm loans, improving their cash flow to facilitate loan repayment, improving their management skills, and diversifying their crops.[200] The program targets residents of Bolivar, Washington, Humphreys, Holmes, and Yazoo Counties in Mississippi.[201] Dr. Harness indicated that most SFTTAP participants are black, since most white farmers in the Delta operate larger farms. Approximately 250 clients are helped on a daily basis through Alcorn's program.[202]

Dr. Harness described some of the difficulties that black farmers face in obtaining loans and venture capital. He explained that the most significant problem that black farmers face is the late approval of their loan applications, which inhibits their ability to plant crops and harvest them in a timely fashion in order to compete with area farmers.[203] Another difficulty is the amount of debt that African American farmers often incur when attempting to secure financial support. Dr. Harness remarked that as a result of Alcorn's program, in 1995 only 11 percent of its clients had farm debt, as compared with 98 percent in 1989.[204] While these participants may be more successful in reducing their farm debt, other farmers are not as fortunate. For example, Lloyd Shaffer, a farmer in Bentonia, Mississippi, described his son's experiences with a local Farm Service Agency (FSA) office when starting his first farm:

> He requested machinery . . . to do his job with, and do a well-done job, but he did not receive that. He had to depend on other farmers in order to operate his land,

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[199] Ibid. Annual awards administered at the 1890 and 1862 Land Grant Institutions and were used for training and management assistance for minority and small farmers and ranchers. Personalized technical assistance consisted of providing individualized custom farm plans, production and marketing practices, farm accounting, and record-keeping principles. A farm management specialist then visited every participant's farm one to three times per month.

[200] Jesse Harness, Ph.D., associate extension administrator and coordinator of civil rights and equal employment opportunity, Alcorn State University, telephone interview, July 19, 1996 (hereafter cited as Harness Interview); *see* ibid. Small farmers are defined as those who have gross incomes of $100,000 a year or less. In addition, a small farm is considered to be 200 to 300 acres of land, and a large farm is 4,000 to 5,000 acres. *See generally* ibid. The program encourages farmers to grow crops such as vegetables that are nontraditional for Mississippi. Vegetables require less acreage for a profitable return than other crops that have traditionally grown in the state, i.e., cotton, soybeans, and rice. Cotton may produce $250/acre of land, while vegetables could produce $2,000/acre.

[201] Ibid. The program also serves Madison Country, which borders the Delta.

[202] Ibid. Another 400 to 800 clients are also assisted through this program. Some of these individuals are residents of nontargeted counties.

[203] Ibid.; USDA/CRAT, *Civil Rights*, p. 21. "[In 1995 and 1996,] only 67% of African American [FSA direct and guaranteed] loans were approved in Louisiana, compared to 83% of non-minority loans. Alabama showed a similar disparity—only 78% of African American loans [were] approved, compared to 90% of non-minority loans. . . . In the Southeast [part of the country], . . . in several States it took three times as long on average to process African American loan applications as it did non-minority applications. Similar disparities between non-minority loan processing and American Indian loan processing appeared in records for a number of States included in FSA's Northwest region." Ibid. *See also* ibid., p. 15. This reference provides an overall description of farmers' experiences in obtaining FSA loans, and how the agency's processing delays resulted in a loss of farm profit. R.C. Howard, Tchula, Mississippi farmer, telephone interview, Feb. 6, 1997 (hereafter cited as Howard Interview). Mr. Howard remarked that area white farmers informed him of their standard practice in purchasing fertilizer. They told the local fertilizer company that they expected an FSA loan. The fertilizer company would then contact FSA, and the agency would confirm that the farmer should receive the farm loan. These farmers would receive their fertilizer supply on credit. When Mr. Howard attempted this, the FSA reportedly told the fertilizer company that he had submitted a loan application, but it could not verify that Mr. Howard would get a loan. As a result, Mr. Howard could not obtain his fertilizer.

Herbert Williams, a Warren County, Mississippi, farmer, testified during the public session of the hearing that local FSA officials overtly delayed processing his farm loan, and reduced the requested amounts. As a result, he was only able to purchase one tractor but no additional farm equipment. In addition, he maintained that in 1996, white farmers' loan applications were processed before his, although his request had been submitted earlier. Williams Testimony, Hearing Transcript, pp. 653–55.

[204] Ibid. Dr. Harness indicated that the 1995 percentage rate is lower than the overall state average.

> [and] do his operation. And it kind of crippled him in a way. He was late getting financed on one of his crops, which was the soybean. And when he did get [the loan], he didn't have enough money to complete his job, to . . . do a good farm practice. But he's stuck now with a debt that he's going to have to carry for 15 years. They did re-amortize his debt for 15 years, but if he had . . . the proper equipment from the beginning . . . he could of went and finished his job, got his seeds in the ground, harvested his crop, and been able to adjust his debt at the end of the year, more so than what he did. . . .[205]

These problems may also be due to the impact of the Federal Agriculture Improvement and Reform Act of 1996 (1996 FAIR Act).[206] Several provisions of this act altered the FSA loan process. For example, farmers who had been previously eligible for FSA's debt forgiveness program were no longer qualified for FSA loans.[207] Secondly, those farmers who were delinquent on direct or guaranteed farm loans would not be eligible for FSA direct operating loans.[208] Those individuals with restructured loans through a USDA debt reduction program would be exempt from this provision and could apply for operating loans.[209] In addition, to qualify for FSA Emergency Loans, which are issued as a result of natural disasters, borrowers cannot be delinquent on any direct or guaranteed FSA loan.[210] Finally, the 1996 FAIR Act eliminated a provision, the farmland leaseback-buyback program, which "offered farmers who had lost their farmland to FSA through foreclosure, bankruptcy, or voluntary conveyance a chance to reacquire that land."[211]

African American farmers also contend that other hindrances prevent them from obtaining equitable farm financing. Although these farmers may have 90 percent federally guaranteed loans, local banks are reluctant to issue funds to them.[212] Banking requirements that demand excessive amounts of collateral only serve to support farmers' reluctance to use local banks' services.[213] Dr. Harness referred to a catfish cooperative in Mound Bayou, Bolivar County, Mississippi, that was initiated by a group of black farmers. They experienced difficulties obtaining financing to support their processing facility. In addition, Dr. Harness indicated that black farmers in Bolivar County have frequently reported problems relating to obtaining services from federal agencies in that county. They attributed these difficulties to racial discrimination.[214]

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[205] Lloyd Shaffer Testimony, Hearing Transcript, pp. 584–85.

[206] Pub. L. No. 104-127, 110 Stat. 888 (codified at 7 U.S.C.A §§ 7201–7334 (Supp. 1998)). *See generally* Stephen Carpenter, "Farm Service Agency Credit Programs and USDA National Appeals Division," *Drake Journal of Agriculture Law*, vol. 3 (Spring 1998), pp. 35, 36–43 (hereafter cited as Carpenter, "FSA Credit").

[207] *See* 1996 FAIR Act, Pub. L. No. 104-127, § 648(b), 110 Stat. 888, 1104 (codified at 7 U.S.C.A. § 2008h (Supp. 1998)); Carpenter, "FSA Credit," p. 37; U.S. Department of Agriculture, Office of Communications, 1996 Farm Bill, "The Federal Agriculture Improvement and Reform Act of 1996," (visited Dec. 6, 1998) <http://www.usda.gov/farmbill/title0.htm> (hereafter cited as USDA, "1996 FAIR Act"). *But see* USDA Secretary Dan Glickman, "Introduction of the Agricultural Credit Restoration Act," USDA Press Release No. 0124.98 (Mar. 19, 1998) (visited Dec. 6, 1998) <http:// www.usda.gov/news/releases/1998/03/0124>. Secretary Glickman recognized Rep. Eva Clayton (D-NC) and Senator Charles Robb (D-VA) for supporting legislation to eliminate this problem. "The Agricultural Credit Restoration Act will help restore the notion of redemption to our farm credit policy. The 1996 Farm Bill stripped every producer who's ever had a USDA farm debt write-down of the ability to get another government farm loan. That standard is stricter than even that which for-profit commercial banks use. That is not the business of government. . . .We are the final place people have to turn to before they lose land that often has been in their family for generations. This bill offers a solution that is fair to farmers, that recognizes the risks they have to face every day. It is also a solution that is fair to taxpayers, and makes sure we offer a second chance to those who are credit worthy. . . ." Ibid.

[208] *See* 1996 FAIR Act, Pub. L. No. 104-127, § 648(b), 110 Stat. 888, 1104 (codified at 7 U.S.C.A. § 2008h (Supp. 1998)); Carpenter, "FSA Credit," pp. 37–38.

[209] USDA, "1996 FAIR Act"; 7 U.S.C.A. § 2008h(b)(2) (Supp. 1998).

[210] 7 C.F.R. § 1945.162(a)(1998); Carpenter, "FSA Credit," p. 38.

[211] Carpenter, "FSA Credit," p. 40; *see* 7 U.S.C. § 1985(e)(1)(A)(i) (1994) (repealed and replaced by 1996 FAIR Act, Pub. L. No. 104-127, § 38, 110 Stat. 888, 1094 (codified at 7 U.S.C.A. § 1985(c) (Supp. 1998)); USDA/CRAT, *Civil Rights*, p. 26. "Because this rule change ended the program altogether, without protection of existing options, many minority and limited-resource farmers have lost this opportunity to repurchase their land." Ibid.

[212] Harness Interview. *See* Lloyd Shaffer, Bentonia, Mississippi, farmer, telephone interview, Feb. 18, 1997 (hereafter cited as Shaffer Interview). Mr. Shaffer stated guaranteed loans are difficult for black farmers to obtain, since most of the local banks generally do not lend to minorities. He explained that loan applications have to be approved by a local FSA branch supervisor in the farmer's county. The application is sent to a state office for approval. However, the state office sanctions the application only after the local bank issues its approval. Although the guaranteed loans are available to black farmers, over the years white farmers have frequently relied more on this source of funding. *See also* Harness Interview. Dr. Harness stated African American farmers' problems are further exacerbated by the reduction of the number of direct loans that they can obtain from the federal government.

[213] Shaffer Testimony, Hearing Transcript, p. 596. "My brother and I went to our local bank, which was his bank which he had been doing business with for I don't know how many years, to purchase a $16,000 refrigerated truck. I'm a

Similarly, R.C. Howard, a farmer from Tchula, Mississippi, who has received assistance from Alcorn University, informed a Commission staff attorney of his experience with an FmHA local office. His loan application remained on an FmHA supervisor's desk for 30 days before he was advised that additional information was required to process the request.[215] Mr. Howard supplied this information, and he applied again in January of 1993 for a loan. He continually checked on its status by telephoning and sending letters to the Secretary of Agriculture and a state administrator. In July of 1993, he learned that his loan was denied. Mr. Howard appealed the determination, and the appeals officer later reversed this judgment. Simultaneously, he was advised to contact the FmHA supervisor, who informed him that his application did not include a cash flow amount.[216] After this experience, Mr. Howard wondered why the supervisor allowed his application to languish on his desk for six months.

Although FSA is characterized as the "lender of last resort" for all small farmers, African American farmers contend they are frequently the recipients of financial leftovers. Other reports have revealed that these farmers obtain a smaller share of agricultural benefits than their white counterparts, and that blacks as well as other individuals with small farms have difficulty economically competing with large farming operations.[217] While poverty and unemployment continue to be serious concerns for the Mississippi Delta, "the government has foreclosed on so much land in Bolivar County, [Mississippi] . . . that it is now one of the biggest land owners, its field mostly filled with weeds and fallow."[218]

Factors Contributing to the Lack of Black-Owned Farms

In addition to difficulties in obtaining farm loans, other factors contribute to the alarming decrease in the number of black-owned farms in the Mississippi Delta region. One cause is foreclosure on farm property. Other factors stem from allegations of discriminatory treatment based on race in the manner in which the USDA administers its farm programs. In 1995, several minority farmers filed a lawsuit in the United States District Court for the District of Columbia against the USDA. The plaintiffs in this case, *Williams v. Glickman*,[219] requested that their case be certified as a class action lawsuit, and they alleged that the USDA had discriminated

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vegetable farmer. The bank said they wanted the truck for collateral, a $10,000 CD, and 40 acres of land, for the truck. And this was in 1992, I believe. And that's the situation we face when we go to borrow money, even in the local banks. . . . [W]e must have a lot of confidence in ourselves, because we put it all up." Ibid.

[214] Harness Interview.

[215] Howard Interview.

[216] Ibid. Mr. Howard indicated that he had obtained assistance completing his loan application from Alcorn's SFTTAP. He asserted that FmHA staff altered the figures on his application so that it did not reflect cash flow and other amounts. Mr. Howard, who had kept a copy of his original application, was later informed by FmHA staff that certain information, such as his income tax return, was missing from his loan request. When he searched the contents of his file at the FmHA office, he was able to retrieve the missing information from the office file.

[217] Tony Freemantle, "Black Farmers Besieged by Economics, Racism," *The Houston Chronicle*, Mar. 9, 1997, p. A1 (hereafter cited as Freemantle, "Black Farmers Besieged"); *see* Ben Burkett, state coordinator, Federation of Southern Cooperatives/Land Assistance Fund, "Black Owned Land: A Disappearing Resource," Mississippi Delta Hearing, Exhibit 15. "Another provision in the [1996 Farm] Bill is the seven year transitional payments . . . [which] will have an adverse impact on Black farmers. The government will provide subsidies for the next seven years, and after that, farmers are on their own. Any farmer growing crops will have to be able to sell his product on the world market. If credit is not available, how can Black farmers compete with large corporate farms? Without the subsidies, he/she will be at the mercy of a market controlled by large corporate farms. Is it the government's plan to take Black farmers back to sharecropping? What will happen to thousands of other Black farmland owners, such as Black women who own land and rent to Black farmers? [B]y making farm land available to Blacks, these women are getting much needed income. If Blacks are unable to farm that land, it too will fall prey to land speculators because it then becomes a burden to its owner." Ibid.

[218] Freemantle, "Black Farmers Besieged." *Cf.* ibid. "Unemployment rates in Bolivar County sit at 8.4%, compared with the state average of 5.9%. In some communities, 60% of the households have incomes below the poverty level."

[219] Court Opinion of Plaintiffs' Motion for Class Certification, No. 95-1149, 1997 U.S. Dist. LEXIS 1683 (D.D.C. Feb. 14, 1997). This case is now known as *Herrera v. Glickman*.

against them based on their race.[220] The court ultimately denied the plaintiffs' motion for class certification and determined that they did not meet the class certification requirements and that their proposed class definition was overly broad.[221]

Subsequently, a group of black farmers also filed suit against the USDA.[222] The lead plaintiff in this case was Timothy Pigford, a North Carolina farmer.[223] This suit alleged that the Secretary of Agriculture and his predecessors administered programs through the Farm Service Agency (formerly, the Farmers' Home Administration), which "developed and maintained a pattern of racial discrimination." Secondly, the plaintiffs contended that the federal government denied their farm loan applications and failed to provide appropriate technical assistance, which ultimately resulted in a loss of their livelihoods.[224] In addition, they asserted the USDA completely failed to process discrimination complaints, when its Office of Civil Rights Enforcement and Adjudication (OCREA) was dismantled in 1983. "[F]armers who filed complaints of discrimination never received a response, or if they did receive a response, it was a cursory denial of relief. In some cases, the plaintiffs allege that OCREA simply threw discrimination complaints in the trash without ever responding to or investigating them."[225]

In response, the U.S. Department of Justice (DOJ) contended that the farmers' previous complaints filed against the USDA were too ancient to be currently valid, therefore barring their lawsuit because of a statute of limitations provision.[226] The DOJ also indicated that the individual plaintiffs alleged an excessive number of issues to proceed with their cases at one time.[227] Congress subsequently voted to waive the statute of limitations requirement to allow the farmers to seek redress against the USDA for old race discrimination allegations.[228] The Congressional Black Caucus, under the leadership of Representative Maxine Waters (D-CA), was a primary proponent of the statute of limitations waiver provision. The caucus declared the House-passed waiver provision to be "the first part of a major victory to close this ugly chapter of discrimination by the U.S. Department of Agriculture against black farmers, who have endured decades of discrimination."[229] U.S. District Judge Paul L. Friedman then certified this case, *Pigford v. Glickman*, as a class action lawsuit in October 1998. As a result, the case against the USDA would go forward with the black farmers represented as a single group of plaintiffs.[230]

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[220] *Id.* at *7. The proposed class of plaintiffs was defined as: "All African American or Hispanic American persons, who between 1981 and the present, have suffered from racial or national origin discrimination in the application for or the servicing of loans or credit from the FmHA (now Farm Service Agency) of the USDA, which has caused them to sustain economic loss and/or mental anguish/emotion [sic] distress damages." *Id.* at *10.

[221] *Williams*, 1997 U.S. Dist. LEXIS 1683. "Most of the original Williams plaintiffs settled their claims against the USDA. The two remaining plaintiffs, both of whom are Hispanic, had pending administrative complaints with the USDA, and the court therefore [stopped] the lawsuit pending an administrative determination by the USDA on the merits of the administrative complaints." Pigford v. Glickman, No. 97-1978, 1998 U.S. Dist. LEXIS 16299 at *8, n. 2 (D.D.C. Oct. 9, 1998). Pigford v. Glickman, 185 F.R.D. 82, 1999 U.S. Dist. LEXIS 5220 (D.D.C. 1999).

[222] Mary Beausoleil, "Black Farmers Battle USDA," *The Richmond Times Dispatch*, Nov. 24, 1996, p. A1. *See* Mary Beausoleil, "Farmers: Enough Hearings," *The Richmond Times Dispatch*, Dec. 15, 1996, p. A1 (hereafter cited as Beausoleil, "Farmers: Enough Hearings.") Black farmers sought a speedy settlement of civil rights cases filed against the USDA that have been pending for a number of years.

[223] *See generally* Martin, "For the Land's Sake." The author provides a detailed description of Mr. Pigford's farming experiences with the USDA.

[224] Beausoleil, "Farmers: Enough Hearings." *See also* Dave Hirschman, "USDA Chief Plans Visit to Assess Bias Charge," *The Commercial Appeal*, Jan. 1, 1997, p. B4. Approximately 300 black employees have also filed a class action lawsuit against the USDA's Forest Service. They alleged the agency's management officials perpetuated a pattern of disparate treatment in various areas, such as training, promotions, hiring, and award recognition. The case originated in Region 8, which includes South Carolina, Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Texas, Virginia, and Puerto Rico.

[225] *Pigford*, 1998 U.S. Dist. LEXIS 16299 at *5.

[226] Peter Hardin, "Congress Lifts Key Obstacle to Redress for Black Farmers," *The Richmond Times Dispatch*, July 18, 1998, p. A1 (hereafter cited as Hardin, "Congress Lifts Obstacle"); *see generally* Henry Campbell Black, *Black's Law Dictionary* (St. Paul: West Publishing, 1983), p. 477 (paperback edition). A statute of limitations is defined as: "A statute prescribing limitations to the right of action on certain described causes of action. . . . declaring that no suit shall be maintained on such causes of action . . . unless brought within a specified period of time after the right accrued. . . . Statutes of limitations are statutes of repose, . . . legislative enactments as prescribe[d] [by] the periods within which actions may be brought upon certain claims or within certain rights may be enforced." Ibid.

[227] Bill Miller, "Judge Allows Black Farmers' Class-Action Suit," *The Washington Post*, Oct. 10, 1998, p. A13 (hereafter cited as Miller, "Judge Allows").

[228] Hardin, "Congress Lifts Obstacle." Both the U.S. House of Representatives and the U.S. Senate agreed to waive the statute of limitations provision. The White House and USDA Secretary Glickman also supported this measure.

The next month the USDA offered the *Pigford* plaintiffs a settlement of their case.[231] Generally, the proposed settlement would identify the plaintiffs into two separate groups:

> One class would be those farmers who have complained of discrimination involving lending and debt. [J.L.] Chesnutt, [one of the attorneys representing 600 black Georgia farmers,] said the government proposes to write off debts, replace or provide comparable land lost in a package that could average $200,000 per farmer. In the other category, in which USDA officials contest the claims, a one-day binding arbitration is proposed that could result in settlements that may reach $1 million or more. . . .[232]

In January 1999, attorneys for both sides entered into a five-year consent decree. On April 14, 1999, U.S. District Judge Paul L. Friedman gave final approval to the settlement. This settlement was denounced by a host of farmers, civil rights leaders, and others as inadequate.[233] Under the framework of the settlement, claimants had a choice of one of two "tracks" for processing their claims. Under Track A, a claimant receives a blanket payment of $50,000, plus additional relief in the form of forgiveness of their debt on loans affected by discriminatory conduct, and some offset of tax liability if they provide written "substantial evidence" of credit discrimination. Most claimants—19,226 as of April 2000—have chosen Track A.[234] Farmers with more evidence of discrimination could seek larger damages by opting for Track B. As of April 2000, 142 claimants have chosen Track B, which has a higher standard of proof—preponderance of the evidence—than Track A, but provides for a tailored settlement based on individual circumstances, including a cash payment equal to actual damages and forgiveness of outstanding USDA loans affected by discriminatory conduct.[235] Additionally, claimants were provided the opportunity to "opt out" of the class action suit between April 14, 1999, and August 12, 1999. Two hundred thirty-three claimants chose to opt out and continue individual cases in the administrative process or in court. As of April 2000, approximately 30 claimants have chosen to pursue discrimination cases against the USDA.[236]

There have been problems with the distribution of settlement funds. However, the first $50,000 checks were mailed in November 1999. Poorman Douglas, the firm contracted to process settlement claims, has mailed checks from settlement moneys to 2,412 claimants as of December 1999.[237] Additionally, Representative Jay Dickey (R-AR) and Representative J.C. Watts (R-OK) have proposed a resolution urging the government to speed up payment of money it owes to black farmers.[238] The 38-member Congressional Black Caucus met May 3, 2000, in Washington, D.C., to consider whether or not to support the nonbinding bill. The meeting was hosted by Representative Bennie Thompson (D-MS) who stated the bill was a "feel-good piece of legislation without any substance." Members of the caucus opted to denounce the resolution.

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[229] *See* Congressional Black Caucus, "CBC Wins Waiver of Statute of Limitations For Black Farmer Discrimination Claims," Press Release, June 25, 1998, in which Congressional Black Caucus Chair Maxine Waters, giving special thanks to caucus members, Rep. John Conyers, Rep. Edolphus Towns, Rep. Eva Clayton, Rep. Sanford Bishop, Rep. Jim Clyburn, Rep. Earl Hilliard, Rep. Cynthia McKinney, Rep. Bobby Scott, and Rep. Bennie Thompson, who have "worked tirelessly to ensure justice for black farmers," states: "The CBC has held hearings, participated in 'listening sessions' around the country, joined with black farmers at rallies at the USDA and the Department of Justice, facilitated a meeting between the President and the black farmers, worked with the attorneys representing various black farmer groups, and negotiated the USDA's administrative complaint process for black farmers."

[230] Miller, "Judge Allows." There are more than 400 black farmers in 15 states, who are involved as plaintiffs in this matter. Martin, "For the Land's Sake."

[231] Peter Scott, "Black Farmers Suing for Bias are Offered Deal," *The Atlanta Journal and Constitution*, Nov. 24, 1998, p. A3.

[232] Ibid.

[233] Michael A. Fletcher, "Judge Approves USDA Settlement of Black Farmers' Suit," *The Washington Post*, Apr. 15, 1999, p. A29.

[234] *See* World Wide Web at <http://www.usda.gov/da/consentsum.htm>.

[235] Ibid.

[236] Ibid.

[237] Armando Villafranca, "Too Little Too Late; Black farmers' discrimination settlement may not ease years of pain," *The Houston Chronicle*, Dec. 5, 1999, A1.

[238] Patrick Howe, "Dickey's black farmers bill 'smoke and mirrors,' caucus says," *The Arkansas Democrat-Gazette*, May 5, 2000, p. A3.

Representative Dickey defended his bill, stating, "Though it would have no force of law, it would focus national attention on the issue."[239]

The allegations in the *Pigford* class action lawsuit reflect similar complaints by other black farmers. For example, Ben Burkett, a farmer in the Mississippi Association of Cooperatives informed a Commission staff attorney that he receives "12–15 complaints a year from black farmers who go to the marketplace in Memphis and get a lesser grade on their goods [than what white farmers receive]."[240] Secondly, an investigation of a USDA loan awarded to Welchel Long of Dewey Rose, Georgia, revealed that he received an 18 percent interest rate for a farming loan, while white farmers near his property were charged interest rates as low as 3 percent.[241] Mr. Long contended loan officials asserted he managed his farm inadequately, and failed to recognize his experience of teaching agriculture for 30 years at Tuskegee University in Alabama.[242]

Similarly, Willie Crute of Baskerville, Virginia, applied for a $119,000 USDA loan to finance a new poultry house, in order to take advantage of an offer to farmers by Perdue Farms to raise chickens.[243] Mr. Crute's loan was granted a year later. The delay caused him to forfeit the farming opportunity. USDA investigators subsequently revealed that:

> white farmers in [Mr. Crute's] county typically waited 84 days for loan decisions, while black farmers had to wait an average of 222 days. Investigators also found that 84% of the white applicants had their loan applications approved, while only 56% of the black applicants were granted loans.[244]

As a result of the USDA's findings of discrimination in the FSA's lending practices and administration of technical assistance to black farmers, Secretary Dan Glickman announced in December 1996 that the USDA would temporarily stop all farm foreclosures.[245] The purpose for this order was to determine how discrimination contributed to each farmer's financial difficulties.[246]

Moreover, the Secretary later announced that he and USDA's Civil Rights Action Team (CRAT) would attend a series of 13 "listening sessions" across the country, to receive the public's views on alleged USDA civil rights violations.[247] CRAT was mandated to review USDA's policies and recommend solutions to the Department's institutional barriers that affected service delivery.[248] It was headed by Pearlie S. Reed, USDA's acting assistant secretary for administration and associate chief of the Natural Resources Conservation Service.[249] Listening session forum locations near or in the Delta region included Albany, Georgia; New Orleans, Louisiana; Memphis, Tennessee; Halifax, North Carolina; and Belzoni, Mississippi.[250] During the Memphis and Halifax sessions, farmers informed federal officials of the types of difficulties they have encountered with the USDA, such as the inability to obtain bank loans.[251] Several other black and small-scale white farmers indicated that USDA officials were discourteous and denied their loans at will.[252] Another African American farmer from Halifax, North Carolina, informed the audience how his son had been denied a farm loan:

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[239] Ibid.

[240] Ben Burkett, manager of the Indian Springs Farmers Co-Operative/member of the Mississippi Association of Cooperatives, telephone interview, Feb. 7, 1997 (hereafter cited as Burkett Interview); *see also* Howard Interview.

[241] Bob Hohler, "Black Farmers Press White House," *The Rocky Mountain News*, Dec. 14, 1996, p. 64. "His debt soared to $300,000, thrusting him into foreclosure battles and forcing him to abandon soybeans and cotton for far-less-profitable crops of turnips and collard greens." Ibid.

[242] Ibid.

[243] Fletcher, "Bias," p. A1.

[244] Ibid.

[245] National Public Radio, "Morning Edition," Dec. 20, 1996; Mary Beausoleil, "Minority Farmers Get U.S. Attention," *The Richmond Times Dispatch*, Dec. 22, 1996, p. A1; *see* editorial, "U.S. Agriculture's Seeds of Failure," *The Washington Post*, Dec. 12, 1996, p. A20. Farm Service Agency administrator Grant Buntrock said in a statement, "We recognize there have been instances of discrimination in responding to requests for our services in the past, and we deplore it." *See also* Mary Beausoleil, "White Farmers Turning to Black Group for Help," *The Richmond Times Dispatch*, Dec. 30, 1996, p. A1.

[246] Ibid. *C.f.* Mark Holmberg, "Farmer's File May Have Been Tampered With," *The Richmond Times Dispatch*, Jan. 9, 1997, p. A1. A spokesperson for the USDA acknowledged that a "breach of security" caused a theft of a farmer's file in the western Henrico County, Virginia, local office of the FSA. The file belonged to John W. Boyd Jr., president of the National Black Farmers Association. Previously, Mr. Boyd accused the USDA of racial discrimination.

[247] Mary Beausoleil, "Complaint Sessions Omit State," *The Richmond Times Dispatch*, Jan. 1, 1997, p. A2.; *see also* Burkett Interview, p. 2; "Black Farmers Raise Discrimination Issues with Ag Sec'y at Listening Session in Georgia," *The Greene Country Democrat*, Jan. 8, 1997, p. 1; USDA/CRAT, *Civil Rights*, p. 3. "The listening panels were composed of either Secretary Glickman or Deputy Secretary Richard E. Rominger (with one exception), CRAT members, members of Congress, and members of the State Food and Agriculture Council. Customer sessions were tailored to address the civil rights concerns of specific cultural groups." Ibid.

[248] USDA/CRAT, *Civil Rights*, p. 3.

[249] U.S. Department of Agriculture, Office of Communications, "Glickman Announces Civil Rights Listening Session, Civil Rights Action Team Members," Press Release No. 0651.96 (Dec. 31, 1996) (hereafter cited as USDA, Press Release No. 0651.96); U.S. Department of Agriculture, Office of Communications, "Statement of Secretary Dan Glickman, Civil Rights Action Plan," Press Release No. 0065.97 (Feb. 28, 1997) (hereafter cited as USDA, Press Release No. 0065.97).

> [The] son received a letter from FmHA which said, "You lack sufficient training and experience and education to be successful in farming to assure reasonable re-payment for the loan requested." His son, who grew up on a 300-acre family farm, was a graduate of A&T State University with a major in agricultural education. Since his son had inherited land and equipment from his grandfather, all he needed was operating money. This [USDA] speaker mentioned an FmHA pamphlet for young farmers which says "You're interested in being a young farmer, then FmHA wants to help." . . . Where is the help?[253]

At the conclusion of the Department's listening sessions, Secretary Glickman maintained that efforts to reform the USDA will ensure equitable treatment for everyone.[254] CRAT then issued a report in February 1997 with 92 recommendations and corresponding action plans. During this time, Secretary Glickman specified that the USDA would focus most of its attention on strengthening its accountability, as well as requesting legislative authority to change all nonfederal Farm Service Agency county positions to federal status.[255] Later, Representative Eva Clayton (D-NC) introduced a bill to transfer the employment status of county FSA employees to a federal civil service level.[256] Secretary Glickman also referred to the outcome of an Office of Inspector General (OIG) report on discrimination allegations in USDA's farm loan program: "The OIG found that 'staffing problems, obsolete procedures, and little direction from management' resulted in a 'climate of disorder' within the civil rights staffs at the Farm Services Agency and at the departmental level."[257]

Allegations of Discrimination at Local USDA Farm Offices

In March 1997, the Commission received testimony and evidence from several African American farmers who testified about discriminatory treatment at local farm offices. Ben Burkett, a member of the Mississippi Association of Cooperatives, testified about how black farmers are often discouraged to apply for loans and to grow certain crops:

> Yes, we have had farmers go into the local office and we [the Mississippi Association of Cooperatives] tell them in our training session that [the local office] cannot refuse to give you an application . . . package. . . . But when they go in and the supervisor talks to them and they say well, you just can't make no money growing 150 acres of cotton, you know, there . . . ain't no need of you going through the [loan application] process, because you are going to be turned down anyway, [it] just dishearten[s] the farmer. And I tell them that if you know the law and your rights, they cannot refuse you an application.[258]

Further, Mr. Burkett also testified about his experience with a local county office official who rejected his farm plan application, since it was prepared with the assistance of Alcorn University's technical assistance program.[259]

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[250] *See* Beausoleil, "Complaint Sessions." Other sessions were held in Tulsa, Oklahoma; Brownsville, Texas; Salinas and Sacramento, California; Rapid City, South Dakota; and Window Rock, Arizona.

[251] Clubb, "Glickman Hears."

[252] USDA/CRAT, *Civil Rights*, p. 6. Female farmers, as well as Hispanic, Asian, and Native American farmers also voiced their concerns about being excluded from USDA programs, as well as the Department's alleged lack of accountability. Ibid., pp. 6–8.

[253] Ibid., pp. 27–28; *see* Mary Beausoleil, "Farmers Vent Anger at Session," *The Richmond Times Dispatch*, Jan. 10, 1997, p. A1.

[254] USDA/CRAT, *Civil Rights*, pp. 27–28.

[255] USDA, Press Release No. 0065.97, p. 1. The Secretary indicated that these measures and other actions would assist the Department in ensuring the enforcement of federal civil rights laws.

[256] Elizabeth Warren, "Clayton's Farm Service Plan Praised," Medill News Service, Oct. 24, 1997 (visited Dec. 6, 1998) <http://www.fayettevillenc.com/foto/news/content/1997tx97oct/n24farm.htm>.

[257] USDA, Press Release No. 0065.97, p. 2. Following this report, it was expected the OIG would examine discrimination complaints in state and county farm loan operations.

[258] Ben Burkett Testimony, Hearing Transcript, pp. 597–98.

[259] Ibid., pp. 591–92.

African American farmers also contend that there is a lack of racially diverse staff in local farm offices. The CRAT report confirmed this disparity does indeed exist (see table 1.12).

TABLE 1.12

FSA County Committee Members by Race, Sex, and Ethnicity, 1996: Southeast Region of the United States

	Males	Females
White	2,287	121
Black	27	1
Hispanic	21	7
Asian American/Pacific Islander	1	0
American Indian/Alaskan Native	4	0

SOURCE: U.S. Department of Agriculture, Civil Rights Action Team, *Civil Rights at the United States Department of Agriculture*, February 1997, p. 19.

Similarly, John Boyd, president of the National Black Farmers Association, informed the Commission that local county offices primarily do not reflect minority participation.[260] Regarding data he obtained from a Mississippi state office, Mr. Boyd stated:

> Out of 80 [agricultural] committees [in Mississippi's 82 counties, there are] only two with elected minority participation in the whole state of Mississippi. Out of the 80, 78 have [an] appointed minority advisor, which is a position that doesn't carry a vote. And we advocate that there's no need for being there, you know.[261]

Moreover, Mr. Boyd emphasized:

> That committee in the county is probably the most powerful committee when you get down to agriculture. They set the program that's going to come in that county; they do the hiring for that local office. There's five employees in there. They determine who is going to be hired, [and] if [land is going] to be declared a disaster in that area. . . . That county committee [has] to say this county should be declared a disaster. . . . So when a farmer come[s] in there and applies there, . . . say he want[s] to stop erosion on his farm, this committee has to certify first of all that he's an eligible producer in that county. Then [the committee has] to certify as to [whether] his [farm] is feasible.[262]

Other sources have also acknowledged the impact of the lack of a diverse staff at many FSA county offices. According to the CRAT report, the lack of diversity at local FSA offices has an adverse affect on agriculture program delivery. "Underrepresentation of minorities on county committees and on county staffs means minority and female producers hear less about programs and have a more difficult time participating in USDA programs because they lack specific information on available services."[263] However, Ben Burkett, a member of the Mississippi Association of Cooperatives, recommended one possible solution to this problem, which would be to construct a local five-member committee.[264] He explained that three of the members could be elected from the general farming community, and two could be appointed by the Secretary of the USDA or the state director.[265]

Lack of Enforcement of Civil Rights Laws

The trend of lack of enforcement of civil rights laws in USDA's programs continues even after intervention by USDA's Civil Rights Action Team. In 1982, the director of FmHA's Equal Opportunity Staff admitted his office was "in no position to enforce compliance with civil rights laws."[266] Eight years later, the acting director of USDA's Office of Advocacy and Enterprise confirmed in writing that FSA was 'frequently in noncompliance with civil rights compliance at the local level."[267]

Later in 1995, the GAO reviewed USDA's effectiveness in enforcing civil rights regulations. It concluded that at the USDA, there are "no formal mechanisms to hold . . . agency heads accountable for the success of their agencies' EEO [equal employment opportunity]/affirmative employment programs."[268] In 1997, Civil Rights Action Team findings indicated that senior USDA managers do not assist in preparing Affirmative Employment Programs (AEPs). AEPs serve to eliminate the underrepresentation of women and people of color in an agency's work force.[269] Furthermore, GAO revealed that "officials with the authority to make personnel decisions regarding employment, job assignments, training, promotions, and terminations at the USDA and the other agencies were rarely involved in the process of identifying barriers and actions to improve the representation of women and people of color in their agencies."[270]

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[260] Ibid., p. 614. Mr. Burkett estimates that there are only about eight African Americans out of a total of approximately 80 staff and supervisors in local FSA offices in Mississippi.

[261] John Boyd Testimony, Hearing Transcript, pp. 599–600.

[262] Ibid.

[263] USDA/CRAT, *Civil Rights*, p. 26.

[264] Burkett Testimony, Hearing Transcript, pp. 610–11.

[265] Ibid., p. 611.

[266] USCCR, *The Decline of Black Farming*, p. 151.

[267] The Minority Farmer: A Disappearing American Resource; Has the Farmers Home Administration Been the Primary Catalyst? H.R. REP. NO. 101-984 (1990).

[268] USDA/CRAT, *Civil Rights*, p. 9.

The CRAT report also indicated that the problem of lack of enforcement of civil rights laws exists from senior management levels down through local USDA agencies. The assistant secretary for administration (ASA) is primarily responsible for ensuring that all of USDA's agencies comply with these regulations.[271] However, the report noted:

> [T]he ASA is not involved in the performance appraisal process for the agency heads and senior executives (other than those in Departmental Administration) whose actions—at least on civil rights—the office ostensibly oversees . . . Accountability at the highest levels should cascade down through agencies' organizational structures, where field supervisors provide direct service to the public. However, without measurable goals, agencies have no way of effectively assessing whether or not they are making progress.[272]

Backlog of Complaints Filed Against the USDA

The significant backlog of unresolved discrimination complaints against the USDA is an ongoing reality for black farmers, who find themselves without appropriate economic and technical assistance from the Department. Moreover, Secretary Glickman has conceded that the Department has discriminated against black farmers in the past and in recent times.[273] This treatment is illustrated in the case of Calvin Brown: Mr. Brown farmed tobacco on land in Brunswick County, Virginia, that was previously owned by his father.[274] In 1984, Charlie Featherstone, a white supervisor at the Brunswick County FmHA office allegedly required Mr. Brown to keep his loan in a restricted account that needed the FmHA's supervisor's signature for any banking withdrawals.[275] When Mr. Brown attempted to obtain his funds to rent a barn to dry his crop, Mr. Featherstone could not be located in person or by telephone.[276] The tobacco crop eventually was ruined, and Mr. Brown was later unable to obtain further loans from the FmHA office. As a result, Mr. Brown filed a discrimination complaint against the USDA in 1984. In 1998, Mr. Brown received an initial response from the Department, which indicated that its Office of Civil Rights was still processing his complaint.[277]

Moreover, John Boyd testified at the March 1997 Commission hearing about the number of complaints that have yet to be documented by USDA officials and resolved:

> [There is] a backlog of complaints that I was told was in the neighborhood of 2,000, and when I had a chance to review the inspector general's report, there was only 241 complaints listed there. There are some farmers in here today that I know have affirmative findings of discrimination. Mr. Eddie Ross from Mississippi. His name is not on this surplus list for settlement or to be even addressed. I mean, what's going to happen to all these farmers that already lost their farms through the hands of discrimination at the Department of Agriculture?[278]

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[269] Ibid.

[270] Ibid.

[271] Ibid., p. 11.

[272] Ibid.

[273] Janelle Carter, "USDA Civil Rights Office 'in Disarray,' Inspector Says; Task Force Urged," *The Washington Post*, Oct. 2, 1998, p. A21 (hereafter cited as Carter, "USDA in Disarray").

[274] CBS, "60 Minutes," Nov. 29, 1998.

[275] Ibid.

[276] Ibid. "[Mr.] Featherstone also denies charges from black farmers that he would routinely sleep in his office while they waited outside to see him. [He explained], 'Sometimes when I had to think of something, or do . . . quite a bit of calculations in my head, sometimes atmosphere pressures would close my eyes to do that.' " Ibid.

[277] Ibid.

[278] Boyd Testimony, Hearing Transcript, p. 594. Mr. Boyd stated, "My particular case has been at the Department for 5½ years. They [the USDA] said I've been discriminated against. Even though your loans were approved, Mr. Boyd, we didn't fund them three years in a row. So they found in favor of discrimination. They said that we'll offer you some type of settlement, some type of debt relief, compensation. None of these things have taken place. Why? . . . I think that all these cases—if this was a group of white individuals the federal government would have stepped in and taken care of them years ago." Ibid. *See also* Clubb, "Glickman Hears." "Abraham Carpenter, Jr. farms 1,000 acres of produce in Grady, Arkansas. He says the USDA has withheld payments due him for three years." Ibid.

Later, USDA's Inspector General Roger Viadero released a report in October 1998 which revealed that the Department's civil rights office continues to make little progress in resolving these complaints.[279] This investigation indicated that as of September 1998, there were 616 unresolved cases. These complaints were organized in "case files too slovenly to ensure the availability of critical documents."[280] In addition, Inspector General Viadero reported that many of the civil rights adjudicators, who were in charge of serious cases, were student interns and staff members with little or no training.[281] Consequently, the inspector general recommended removing the civil rights jurisdiction from the Department's Office of Civil Rights, employing an outside task force to review and resolve these cases, and creating a position of assistant secretary of civil rights.[282]

Inefficiencies in USDA's Complaint Process

The Civil Rights Action Team provided a detailed account of USDA's appeals process for customers who file a complaint:

> When USDA denies a loan, payment, or any other benefit, the customer almost always has appeal rights. Agency appeals processes vary, typically, an appeal goes to a higher level agency official in the county, State, or region, and then to the agency's national office or to the Department. Until 1995, FmHA and . . . FSA appeals processes were handled entirely within the agency. If the customer did not agree with the national decision, the only appeal was to the courts. . . . [M]any farmers, especially small farmers, who have managed to appeal their cases to FSA charge that even when decisions are overturned, local offices often do not honor the decision. They claim that decisions favoring farmers are simply "not enforced." Farmers also mentioned the backlog and length of time needed to appeal, and the lack of timely communication to inform them of the status of their cases.[283]

Similarly, evidence suggests that a number of farmers are dissatisfied with the Department's appeals process to rulings on farm loans and complaints of discrimination. Ben Burkett's view also reflected this sentiment:

> When . . . [the Mississippi Association of Cooperatives] go[es] to hearings with farmers on loan application[s] or discrimination, we follow procedure. We go through the hearing process. We go through the appeal hearing process and . . . when we finish the process, still that farmer does not receive adequate compensation for his effort.[284]

Lloyd Shaffer, a Bentonia, Mississippi, farmer maintained that a reason for the lack of faith in USDA's complaint procedures is probably due to the Department's current policy.[285] Specifically, he explained that an individual initially files a complaint with local county authorities. Difficulties arise because these local committees are composed of those farmers who own large farms and receive the guaranteed loans. In Yazoo County, Mississippi, county committee members are elected by proxy vote, and most county boards continue to have a majority of white members.[286]

Inadequate Outreach and Technical Training

Many authorities have documented the importance of farmers having access to available technical training and assistance in order to be aware of new agricultural advancements. This access to information and assistance is particularly critical for African American and other small farmers, who have historically been denied an equitable level of federal support.[287] During the Belzoni, Mississippi, USDA listening session, speakers commented that there were funding discrepancies among the various land grant institutions that provide needed technical assistance to area farmers. They asserted that financial support should be assigned in proportion to the number of minority farmers in Mississippi.[288] In addition, the CRAT report also found that people of color and small farmers are usually not represented on research and education advisory boards. It suggested that there would probably be more participation from people of color if these committees were more diverse.[289] Moreover, Ben Burkett, a witness at the Commission's Mississippi hearing, contended county FSA offices provide limited technical assistance to area minority farmers. According to Mr. Burkett, FSA office personnel fail to communicate effectively with black farmers and often make recommendations to black small farm owners that are detrimental to their financial interests, e.g., recommending the farmers rent rather than purchase machinery. Mr. Burkett recommended the USDA initiate a national outreach effort to educate these consumers.[290]

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[279] Carter, "USDA in Disarray."

[280] Ibid.

[281] Ibid.

[282] Ibid. The proposed task force would be composed of civil rights staff from other federal agencies and senior USDA personnel. In response, Secretary Glickman indicated that he would request permission from Congress to create the new civil rights position, but he did not support the outside task force recommendation.

[283] USDA/CRAT, *Civil Rights*, p. 23. *But see* ibid., p. 23. A 1996 D.J. Miller Report indicated that when minority farmers did use the USDA's appeals system, there was not a statistically significant difference among the outcomes of white male, female, and minority farmers' complaints.

[284] Burkett Testimony, Hearing Transcript, p. 580.

[285] Shaffer Interview.

[286] Ibid. In the past, Mr. Shaffer indicated that black farmers were unaware of the process to obtain membership on county boards.

[287] *See* Brown, Christy, and Gebremedhin, "Structural Changes," p. 62; Patricia E. McLean-Meyinsse and Adell Brown Jr., "Survival Strategies of Successful Black Farmers," *Review of Black Political Economy*, Spring 1994, p. 78.

Conclusion

A variety of factors have been attributed to the significant loss of black-owned farmland in the Mississippi Delta. One of these contributors, the U.S. Department of Agriculture, plays a primary role in offering technical and economic support to the nation's farmers. Specifically, USDA's Office for Civil Rights Enforcement monitors the Department's civil rights activities and programs, and farming credit assistance is offered through USDA's Farmers Home Administration/Farm Service Agency. Historically, rural development initiatives originated from university-based land grant and cooperative extension programs. They were the result of the First and Second Morrill Acts in the 1800s and the 1914 Smith-Lever Act, which provided southern farmers with their initial opportunity to learn current agricultural advancements through county USDA offices. This information often enhanced farmers' agricultural yield and farm management skills. In contrast, African American farmers often did not have equal access to these opportunities, which diminished their likelihood of obtaining farm loans, equipment, and technical expertise in a timely fashion. Moreover, they also faced overt discriminatory actions in lending and agricultural support services that led to the demise of black-owned farms. These barriers continue today.

Without appropriate technical assistance and financial support, African American farmers in the Mississippi Delta often experience lending difficulties and significant loan debt. More recently, legislative developments, such as the 1996 FAIR Act, also affect black farmers' ability to maintain their farms successfully by eliminating leaseback-buyback options and restricting debt forgiveness eligibility and FSA direct operating and emergency loans. However, one intervention initiative, Alcorn University's cooperative extension program, is successful in assisting minority and small farmers in various Mississippi counties in improving their cash flow, diversifying their crops, and acquiring farm loans.

Subsequent legal action in the *Williams v. Glickman* case and *Pigford v. Glickman* class action suit, as well as criticisms voiced in nationwide "listening sessions," emphasized the need for the USDA to address and resolve black farmers' and African American USDA staff members' past and current complaints of discriminatory treatment from USDA officials. In response, the USDA offered the *Pigford* class action plaintiffs a settlement and ultimately acknowledged that the Department has subjected black and other minority farmers to unfair practices. The Department has also issued a number of findings and recommendations to ensure impartial services for everyone. Despite these efforts, black farmers in the Mississippi Delta still await equitable treatment, appropriate technical assistance, and fair lending practices from the USDA.

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[288] USDA/CRAT, *Civil Rights*, p. 28.

[289] Ibid., pp. 28–29.

[290] Burkett Testimony, Hearing Transcript, pp. 615–16.

CHAPTER 2

Race and the Public Education System in Mississippi

ELEMENTARY AND SECONDARY EDUCATION

Scholars have warned that absent innovative policy changes, Mississippi and the rural South will face a work force crisis as a result of the globalization of the regional economy and the shift away from unskilled industrial labor.[1] Mississippi currently lacks the skilled and educated workers necessary to stimulate vigorous economic growth. The state has long been characterized by an out-migration of talent from the region, with a corresponding "brain drain" each year of college students who elect to leave the Delta upon graduation.[2] According to the CEO of one Delta corporation, Mississippi is confronting a "horrific" problem in the area of public education, and as a result, he rejects nearly two-thirds of job applicants to his company because they are unable to meet his company's hiring criteria.[3]

One of the biggest challenges facing the Mississippi public school system today is poverty. According to Dr. James Hemphill, special assistant to the state superintendent and director of external relations of the Mississippi State Department of Education, this is particularly evident in the Delta where the economy is so depleted that obtaining a quality education is extremely difficult.[4] High rates of poverty coupled with a legacy of unequal educational opportunities for people of color, who make up more than one-third of the population, have left Mississippi's children at a substantial disadvantage compared with the rest of the nation.

Background

In 1990, 75.2 percent of the total U.S. population had a high school diploma or higher educational attainment. This figure was 77.9 percent for whites and 63.1 percent for blacks. In Mississippi, however, the figures were much lower with a rate of 64.3 percent for the total state population, including 71.7 percent for whites and 47.3 percent for blacks. The gap between educational achievement in Mississippi and the rest of the nation and that between black and white Mississippians are equally dramatic for those with a bachelor's degree or higher. Compared with 20.3 percent of the total U.S. population, only 14.7 percent of the Mississippi population had a bachelor's degree or higher. Nationwide the figures for whites and blacks were 21.5 percent and 11.4 percent, respectively, compared with 17.2 percent of Mississippi whites and 8.8 percent of Mississippi blacks. Only Arkansas and West Virginia lagged behind Mississippi in equivalent educational attainment.[5]

In 1995, the national high school graduation rate was about 86 percent—the same level as in 1990.[6] In contrast, Mississippi had a graduation rate of 75 percent in 1995.[7] And that number had declined to 73.8 percent by 1998.[8] Although the total number of public high school graduates is projected to increase 20 percent between 1995–1996 and 2007–2008, in Mississippi the total number is expected to decrease 1 percent.[9] Failing to complete high school has a direct impact on a person's potential for financial stability and success. In 1992, for example, high school dropouts were three times more likely to receive income from AFDC or public assistance than high school graduates who did not go on to college (17 percent versus 6 percent).[10] And in 1998, high school graduates nationwide had an unemployment rate of 4 percent compared with 7.1 percent for those who had not completed high school.[11]

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[1] George B. Autry and Dr. C.E. Bishop, *MapFacts: Workforce Preparation*, series no. 1 (Jackson, MS: Foundation for the Mid South, February 1994).

[2] *See* Dr. Arthur G. Cosby, ed., and others, "Framing the Future: Views on the Future of the Mississippi Delta," *A Social and Economic Portrait of the Mississippi Delta*, Mississippi State University, December 1992.

[3] Roger Malkin, CEO, Delta and Pine Land Co., Scott, MS, telephone interview, July 19, 1996.

[4] Dr. James Hemphill, special assistant to the state superintendent of education, telephone interview, July 19, 1996.

[5] U.S. Department of Education, *Digest of Education Statistics 1995*, p. 21, table 12 (hereafter cited as DOEd, *Digest of Education Statistics*).

[6] Rene Sanchez, "Education Endeavor Falling Short: 10-Year Campaign to Improve Nation's Schools Shows Few Gains," *The Washington Post*, Nov. 10, 1995, p. A3.

[7] *See generally* State of Mississippi, Department of Education, Office of Accountability Reporting, *Mississippi Report Card '95* (hereafter cited as *Report Card '95*).

Education constitutes a major expense for Mississippi. In fiscal year 1995, Mississippi spent $1.478 billion on education or 58.7 percent of all general fund appropriations.[12] The Mississippi public school system comprises 149 school districts and three agricultural high schools, which in 1995 served 503,301 elementary and secondary students.[13] It is difficult to approximate the number of private school students in the state because various sources provide different figures. The U.S. Department of Education estimates that in 1993, Mississippi had 221 private elementary and secondary schools that served 58,655 students.[14] More recently, the Mississippi Private School Association was estimated to have 90 member schools representing 36,000–37,000 students, and the state's Catholic schools, which do not belong to the association, were calculated to represent an additional 10,000 students.[15] Overall, the Mississippi Council of Chief State School Officers estimates that 88.7 percent of Mississippi's school-age children are in public schools compared with the national average of 90 percent.[16]

Quality of Education

Testimony at the Mississippi Delta hearing brought forth a harsh indictment of the Mississippi public school system. Roger Malkin, chairman of the Delta and Pine Land Company in Scott, Mississippi, testified that his company, during the hiring process, has found that many young people applying for work with a high school diploma are "functionally illiterate."[17] Mr. Malkin testified, "I think it's a tragedy, and I'm here as a U.S. citizen, a Mississippi citizen, and I think that public education in the United States is appalling, and we have to do something about it."[18]

As in many high poverty areas, many Mississippi public schools are characterized by dilapidated buildings and insufficient resources. In June 1995, the State Department of Education visited, unannounced, the Quitman County schools and found filthy buildings, truant students, and "depressing and appalling conditions."[19] Clearly, the physical conditions of a school setting—including lighting, air and ventilation, classroom space, and outside distractions—can play a role in the educational process.[20] Many schools in the Delta were built in the 1940s and 1950s and have not been properly maintained.[21] Furthermore, it has been estimated that 30 percent of all Delta schools need additional classroom space to accommodate students adequately.[22]

Mississippi uses a performance-based accreditation system to evaluate its school districts. The accreditation levels are from level 1, which is probation, to level 5, which is excellent. A level 3 is considered successful. For 1995, only one school district received a 5, and 19 school districts were ranked at level 4. The majority of school districts, 90 in total, fell into the 3–3.9 range. Twenty-four schools received a performance index between 2 and 2.9, and 19 received a performance index between 1 and 1.9.[23] Of those 19 low-scoring districts, 10 were located in the Delta or its periphery.[24] The student performance in Tunica County, for example, has been so poor that the district has been under state oversight since March 1997.[25]

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[8] State of Mississippi, Department of Education, Office of Accountability Reporting, *Mississippi Report Card '99* (hereafter cited as *Report Card '99*).

[9] U.S. Department of Education, *The Condition of Education, 1999*, table 51.

[10] U.S. Department of Education, *The Condition of Education, 1995*, indicator 32.

[11] U.S. Department of Education, *The Condition of Education, 1999*, table 385.

[12] Sid Salter, "Education Emerging as Most Defining Issue in Governor's Race," *The Scott County Times*, July 9, 1995, p. 3A.

[13] *Report Card '95*, p. iii.

[14] DOEd, *Digest of Education Statistics*, table 62, p. 73.

[15] Cathy Hayden, "Public vs. Private Schools Issue Still Kindles Passions in Mississippi," *The Clarion-Ledger*, July 16, 1996, p. 6A.

[16] Ibid.

[17] Roger Malkin, testimony before the U.S. Commission on Civil Rights, hearing, Greenville, MS, Mar. 6–8, 1997, transcript, p. 57 (hereafter cited as Hearing Transcript).

[18] Ibid.

[19] *See* Larry Hailey, "Capacity of the School Systems," *A Social and Economic Portrait of the Mississippi Delta*, Mississippi State University, December 1992.

[20] Ibid., p. 109.

[21] Ibid., p. 121; Malkin Testimony, Hearing Transcript, p. 149.

[22] Hailey, "Capacity of the School Systems," p. 109.

Generally, the literature on whether student performance is correlated with spending has been contradictory.[26] Tables 2.1 and 2.2 show that the average total per pupil expenditure for the top 10 performing school districts is $3,963 and for the bottom 10 districts, the figure is $4,509. Thus, on average, the lowest ranking districts spend more money per pupil than the top performing districts.

Unlike other states, Mississippi has not experienced an eruption of equity funding lawsuits. This may be attributable in part to the State Legislature implementing, over the governor's veto, the Mississippi Adequate Education Program. This program seeks to ensure that every school district will receive "sufficient" funds to provide an adequate education. The state will provide an increase of at least 8 percent for education services in every district. The program, implemented in 1998, will continue to be phased in over a six-year period, and will target an additional $130 million annually to education needs throughout the state.[27]

Another factor affecting student achievement is the efficiency of the school district administration, including superintendents. Mississippi has 65 counties that elect, rather than appoint, their school superintendents. This is more than any other state.[28] While many of the top performing districts have *appointed* superintendents, and while many of the worst performing districts have *elected* superintendents,[29] testimony at the Mississippi Delta hearing suggested that data on this matter are inconclusive.[30]

Testimony at the hearing suggested that allowing appointment rather than election of superintendents would "infuse and in fact give the district the ability to go outside the county lines to attract an effective leader."[31] Dr. Ron Love, deputy superintendent, State Department of Education, testified that the most significant drawbacks of electing the school superintendent is that "the talent pool that you've got to select from has got to live right there next door to you, and be affected by all the local politics in that community. So it can be very difficult for them to get some new blood into the community. . . ."[32]

But according to Dr. Hattie Nalls of the Adolescent Family Life Institute, Inc., both elected and appointed officials are subject to the same political influences.[33] Although she said the community has a larger voice in the election of local officials, "even in that, a lot of manipulation goes on," with some ministers, for example, encouraging their parishioners to vote for a particular person.[34] And her criticism of appointed officials was similarly harsh because, based on Dr. Nalls' observations, many appointed positions are decided "before it gets into the chamber."[35]

Testimony at the hearing suggested that only a small minority of the 15,000 school districts around the nation have kept the position of superintendent as an elected one. And yet nearly half of Mississippi's school districts—63 out of 149—have kept the position elected rather than appointed.[36]

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[23] *Report Card '95*, p. iii.

[24] Ibid.

[25] Cathy Hayden, "Delta Schools Search for Answers," *The Clarion-Ledger Internet Edition*, Dec. 21, 1999, <http://www.clarionledger.com/news/9912/21/21deltaschools.html> (May 5, 2000).

[26] Hailey, "Capacity of the School Systems," p. 112. Moreover, several studies have found that socioeconomic status outweighs all other variables in predicting student achievement notwithstanding additional spending. Ibid.

[27] Southern Education Foundation, *Miles to Go: A Report on Black Students and Postsecondary Education in the South*, Atlanta, GA, 1998, pp. A35, A36. *See also* Christopher McEntee, "Mississippi District Inaugurates Bond Program to Enhance Fair School Funding," *The Bond Buyer*, Nov. 4, 1997, p. 3.

[28] Gina Holland, "Top School Districts All Have Appointed Superintendents," *The Clarion-Ledger*, June 11, 1996, p. 3B.

[29] Ibid.

[30] *See* Hearing Transcript, p. 199.

[31] Ibid., pp. 142–43.

[32] Ron Love Testimony, Hearing Transcript, p. 118.

[33] Hattie Nalls Testimony, Hearing Transcript, pp. 624–25.

[34] Ibid.

[35] Ibid.

[36] Ibid., pp. 118–19.

TABLE 2.1

Top Ten Performing Mississippi School Districts

School district	Performance index	Total per pupil expenditure	State and local revenue	Federal revenue	Rank in spending
State average	N/A	$4,211	85.4%	14.6%	N/A
Pontotoc City	5.0	3,629	89.4	10.6	144
Booneville	4.9	4,066	89.3	10.7	92
Corinth	4.9	4,400	86.8	13.2	59
Clinton	4.9	3,644	93.0	7.0	141
Ocean Springs	4.9	3,704	93.5	6.5	137
Petal	4.7	4,188	90.8	9.2	74
Long Beach	4.7	4,079	91.9	8.1	87
Lamar County	4.7	3,485	91.4	8.6	151
Tupelo	4.7	4,664	92.2	7.8	28
Pontotoc County	4.7	3,775	89.4	10.6	134
Top average	N/A	3,963	90.8	9.2	N/A

NOTE: Total per pupil expenditure is calculated by using the total current expenditures from all sources of revenues divided by the nine months' average daily attendance. Rank in spending from 1 to 153, with 1 representing the largest in per-pupil expenditure.

SOURCE: State of Mississippi, Department of Education, Office of Accountability Reporting, *Mississippi Report Card '95*.

TABLE 2.2

Bottom Ten Performing Mississippi School Districts

School district	Performance index	Total per pupil expenditure	State and local revenue	Federal revenue	Rank in spending
State average	N/A	$4,211	85.4%	14.6%	N/A
Oktibbeha	1.0	4,872	80.7	19.3	18
Coahama	1.1	4,527	75.1	24.9	41
Noxubee	1.3	4,073	75.8	24.2	88
Clay County	1.4	5,071	80.6	19.4	7
North Panola	1.5	4,866	76.5	23.5	19
Drew	1.5	4,354	78.8	21.2	62
Holmes	1.5	4,070	73.3	26.7	89
Tunica	1.6	4,962	77.3	22.7	10
W. Tallahatchie	1.6	4,263	73.1	26.9	147
W. Bolivar	1.7	4,036	74.8	25.2	65
Bottom average	N/A	4,509	76.6	24.4	N/A

NOTE: Total per pupil expenditure is calculated by using the total current expenditures from all sources of revenues divided by the nine months' average daily attendance. Rank in spending from 1 to 153, with 1 representing the largest in per-pupil expenditure.

SOURCE: State of Mississippi, Department of Education, Office of Accountability Reporting, *Mississippi Report Card '95*.

It was reported at the hearing that while there have been proposals before the State Legislature nearly every year to mandate the appointment of school superintendents instead of election, the proposals "just don't quite make it."[37] The state is currently focusing on improving the skills of its local school administrators whether elected or appointed.[38]

Several educators and community leaders suggested that the educational process must take place in the home as well as in the schools. Municipal judge and attorney Clell Ward stated in his interview with Commission staff:

> We can't solve the problem through the school system. Parents need to have an understanding as to the importance of education first, and that might entail some sort of program to train parents in conjunction with a program to reduce teenage pregnancy. We need to train parents how to be parents and instill values.[39]

Similarly, Dr. Martha Cheney, project coordinator for the Mississippi Public Education Forum, a private foundation funded by the state's business community, believes that there must be a stronger focus on the "basics," which includes parents talking to their young children in the home during their preschool years.[40]

Funding, Resources, and Equal Opportunity

Title I of the Elementary and Secondary Education Act

The Elementary and Secondary Education Act,[41] enacted in 1965, established several programs that provided federal funds to local school districts. Title I of the act created a program specifically designed to improve educational opportunities for educationally deprived children. Funding levels are calculated based on the number of low-income children in the school district. The Title I program supplements local school efforts to improve the basic and advanced skills of students at risk of school failure.

Title I funds reach approximately 14,000 school districts and serve more than six million children annually. Since Title I's enactment, Congress has appropriated almost $97 billion to local school districts.[42] In 1995, Mississippi received almost $122 million in Title I funds, which were distributed to 719 schools serving 246,524 schoolchildren. Approximately 75 percent of the funds were used for classroom instruction.[43] In 1996, disbursements to Mississippi increased to $126.4 million.[44]

A 1993 U.S. Department of Education study of Title I found that recipients of services under the program in schools where at least three quarters of the children were poor scored substantially lower in math and reading than recipients attending schools where fewer than half were poor.[45] Many of the Delta school districts that continue to perform poorly rely heavily on federal funds.[46] For many school districts, receipt of Title I funds drive their per-pupil expenditures above the state average.

There appears to be disagreement among education leaders as to the costs and benefits associated with accepting Title I funds. Dr. Margaret Cheney, project coordinator of the Mississippi Public Education Forum, argues that residents of the Delta see the federal government as a "sugar daddy" because of the substantial federal assistance received under Title I and from the National Science Foundation.[47]

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[37] Ibid., p. 198. Dr. Cheney testified that the issue of electing superintendents had been considered by the State Legislature "ad nauseam," but the measure is never passed, largely because the chairman of the House Education Committee "very strongly and philosophically believes in the election of school superintendents." Ibid., p. 199.

[38] Andrew Mullins, special assistant to the chancellor, University of Mississippi, telephone interview, July 2, 1996 (hereafter cited as the Mullins Interview).

[39] Clell Ward, telephone interview, July 29, 1996 (hereafter cited as Ward Interview).

[40] Martha Cheney, project coordinator, Public Education Forum, Jackson, MS, telephone interview, July 17, 1996 (hereafter cited as Cheney Interview).

[41] Act of Sept. 30, 1950, Pub. L. No. 874 (codified as amended at 20 U.S.C. §§ 236–244).

[42] U.S. Department of Education, *Title I Grants to Local Educational Agencies*, p. 1.

[43] *Report Card* '95.

[44] U.S. Department of Education, *FY 1996 Title I Allocations*. In 1995, the poverty percentage to qualify for schoolwide programs was 60 percent. In 1996 and thereafter, the poverty percentage decreased to 50 percent. Mary Jean LeTendre, "The New Title I, Helping Disadvantaged Children Meet High Standards," *The Title I Times*, U.S. Department of Education, April 1995, p. 14.

[45] *See* U.S. Department of Education, *Targeting, Formula and Resource Allocation Issues: Focusing Federal Funds Where the Needs are Greatest*, 1993. *See also* Constance Johnson and Penny Loeb, "Stupid Spending Tricks," *US News & World Report*, July 18, 1994, p. 26.

[46] Ibid.; *see* table 2.2.

[47] Cheney Interview.

But Dr. James Hemphill and Dr. Ron Love, both special assistants to the state superintendent, point to the benefits of federal funding. Dr. Hemphill testified at the Mississippi Delta hearing that Title I funding "absolutely" plays a role in raising student achievement levels in poverty areas.[48] He believes that, without it, Mississippi public schools would be in "desperate shape."[49] Dr. Love arrived at the same conclusion.[50] The single criticism with how the money is spent in the state of Mississippi was put forth by Dr. Hemphill, who testified that the funds should be focused earlier in a child's education.[51]

Mississippi Teachers

In 1994, the U.S. Department of Education released a report finding that public school teacher salaries in rural settings are several thousand dollars lower on average than in metropolitan areas.[52] For the 1993–1994 academic year, the average annual salary for teachers nationwide was $36,846.[53] For the same year, Mississippi had the lowest average salary for public school teachers, $25,715.[54] These numbers have increased only slightly: in 1998 the national average was $37,560, and the average in Mississippi was $27,720.[55] Moreover, Mississippi's entry-level salary for teachers ranked near the bottom at $18,833.[56]

In 1997, the State Legislature approved a three-year initiative to raise teacher salaries 10 percent, but even these raises are not expected to make Mississippi's average teacher salary competitive with those in other states.[57] The State Department of Education maintains that while increased teacher pay was the primary legislative goal to address these concerns, there are other efforts underway to address teacher pay in a systematic way, which is essential in recruiting and retaining teachers.[58]

On May 1, 2000, Mississippi Governor Ronnie Musgrove signed a bill into law that gives teachers a 30 percent pay raise to be phased in over the next six years.[59] But teachers are disappointed because of a provision in the new law that requires the state revenue to increase by 5 percent before the raises are given.[60] And although Governor Musgrove has promised to ask the Legislature next year to remove the revenue requirement, Maryann Graczyk, president of the Mississippi American Federation of Teachers, said, "A lot of teachers do not have faith in the Legislature because of past broken promises. Some look at [the raise package] as another set of broken promises."[61]

Testimony at the Mississippi Delta hearing suggested that if *all* the graduates of Mississippi's 15 public and private education schools stayed to teach in Mississippi public schools (currently less than two-thirds of the graduates remain in-state), it still would not be enough to fill the void left by the teachers who are beginning to retire.[62] Current stopgap measures include the use of approximately 1,500 teachers who have been awarded emergency teaching certificates, as well as a large number of "long-term substitutes."[63]

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[48] James Hemphill Testimony, Hearing Transcript, p. 112.

[49] Ibid., p. 85.

[50] Love Testimony, Hearing Transcript, p. 113. Dr. Love testified, "My own prediction is that we would have been worse off [without Title I funding], because they played a major role in supporting the activity of the school districts who had insufficient funds to do the kinds of things that they needed to do." Ibid.

[51] Hemphill Testimony, Hearing Transcript, p. 135.

[52] Rene Sanchez, "Rural Schools Can't Get Teacher's Attention," *The Washington Post*, June 19, 1996, p. A14.

[53] DOEd, *Digest of Education Statistics*, p. 85, table 77.

[54] Ibid. In the competition for teachers, some districts have tried to attract new teachers with incentives. For example, Sunflower County added a $400 supplement to the 1995–1996 starting teacher salary of $20,500 in order to recruit teachers to the county. Such efforts, however, are reportedly insufficient for many rural schools where the teacher retention rate is only one or two years. Rene Sanchez, "Staying the Course, Rookie Bucks Rural Trend to Teach and Run," *The Washington Post*, June 19, 1996, p. A1.

[55] Stephen Hawkins, "Union Gives Miss. C– for its Efforts to Assist Teachers," *The Commercial Appeal*, May 5, 1998, p. B2.

[56] DOEd, *Digest of Education Statistics*, p. 86, table 78.

[57] Public Education Forum of Mississippi, "Quality Teachers, Every Child's Educational Birthright," Jackson, MS, November 1998, p. 10.

[58] Richard L. Thompson, state superintendent of education, letter to Ruby G. Moy, staff director, U.S. Commission on Civil Rights, Apr. 19, 1999. In the letter, Mr. Thompson points to the following evidence of these efforts: an annual salary supplement of $6,000 is paid to teachers who acquire National Board certification; state funding from the Legislature was made available to implement the Mentor Teacher Program; and the State Department of Education applied for discretionary funding under the Teacher Quality Enhancement Grant Programs to recruit and retain teachers in critical teacher shortage areas.

[59] Gina Holland, "Teachers Warily Celebrate Raise," *The Sun Herald*, n.d., <http://www.sunherald.com/news/docs/raise050200.htm> (May 2, 2000).

[60] Ibid.

[61] Ibid.

[62] Mullins Testimony, Hearing Transcript, p. 107.

The current shortage of minority teachers is particularly acute. Minority students only account for about one-tenth of the students in teacher education courses in Mississippi.[64] Moreover, many African American education students, especially those toward the top of the class, are recruited, with higher pay and better benefits packages, to work at schools outside Mississippi.[65]

Dr. Andrew Mullins, former special assistant to the state superintendent of schools, notes that he has seen a precipitous drop in the number of minority teachers obtaining certification. Moreover, testimony delivered in the Mississippi Delta hearing emphasized that many of the poorest school districts, with the highest concentrations of minority students, are also the ones grappling with the most severe teacher shortages:[66]

> There is a severe shortage of teachers in [the Mississippi Delta]. In many cases there is a warm body or no body to instruct the children. We have seen a recent precipitous decline in the number of minority teachers and the number of minority teachers statewide applying for certification. The number of black applicants continues to decline. It is difficult to attract white teachers to all-black districts in many cases. These factors, coupled with experienced teachers retiring earlier, teachers leaving the profession due to classroom discipline problems, inadequate administrators and little or no parental support, create a real and worsening crisis for many of our Delta schools.[67]

Finally, the hearing testimony indicated that despite the fact that schools with high percentages of black students see the need for African American teacher role models,[68] meeting that objective is becoming increasingly difficult in low-income areas such as the Delta. Dr. Love testified, "You can [have] a district that's 97 percent black and at least 50 percent or more faculty will be white."[69]

Mississippi Teaching Corps

Dr. Mullins, former special assistant to the state superintendent of schools, testified at the Mississippi Delta hearing about the Mississippi Teaching Corps, which offers structured entry into the teaching profession for liberal arts graduates from all over the country who have strong backgrounds in math, natural sciences, or foreign languages. The program, which requires a two-year commitment, combines full-time teaching with working toward a master's degree in education. The degree program, financed by the state, includes summer study with a small stipend.[70]

In the summer prior to the first academic year, the teachers are required to enter into a certification process at the University of Mississippi at Oxford. Afterwards, the recruits are assigned to the most impoverished schools, which are primarily in the Delta. On the weekends, they return to the university to work on their master's degrees. Approximately 25 students enroll each year. In 1997, the class of 22 Teaching Corps students included two African American teachers.[71]

Members of the Mississippi Teaching Corps are required to teach for a minimum of two years. Of the 25 teachers who were beginning their second year in 1997, five said they would be staying to teach for a third year. However, testimony at the hearing suggested that many Corps teachers "leave pretty discouraged by the situation that they find themselves in."[72]

Mississippi Critical Teacher Shortage Act of 1998

The state is now aware of the critical need for teachers, and it has funded several creative programs to help address the problem. These programs include the following:

- *Critical Needs Teacher Scholarship Program.*[73] This program provides full scholarships (tuition, room, meals, books, materials, and fees) for full- or part-time students willing to teach in geographical shortage areas.[74]

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[63] Ibid.

[64] Martha Cheney Testimony, Hearing Transcript, p. 179.

[65] *See* Hemphill Testimony and Cheney Testimony, Hearing Transcript, pp. 106, 180. Testimony given at the hearing suggested that increased opportunities in other higher paying professions lead many young blacks to avoid the education profession altogether. Mullins Testimony, Hearing Transcript, p. 109.

[66] Love Testimony, Hearing Transcript, p. 108.

[67] Mullins Testimony, Hearing Transcript, p. 76.

[68] Ibid., p. 110.

[69] Love Testimony, Hearing Transcript, p. 111.

[70] Mullins Testimony, Hearing Transcript, pp. 111–12.

[71] Ibid., p. 112.

[72] Ibid., p. 116.

[73] Hemphill Testimony, Hearing Transcript, p. 145.

- *William Winter Scholarship Fund.*[75] Under this program, if a newly minted teacher agrees to teach for *one* year in both a subject and geographic "shortage" area, the state will repay *two* years of that teacher's educational training.[76]
- *University Assisted Teacher Recruitment and Retention Grant Program.* This program provides scholarships to teachers in shortage areas to seek a graduate degree.
- *Relocation Grant/Reimbursement of Interview Expenses.* One-time grant for teachers moving to teacher shortage areas and reimbursement of expenses incurred during the interview process at districts' discretion.
- *Mississippi Employer-Assisted Housing Teacher Program.* This program is a special home loan program for teachers agreeing to serve in shortage areas.
- *Mississippi School Administrator Sabbatical Program.* This program reimburses the salary and fringe benefits (for one year) paid to teachers completing an approved full-time administrator preparation program.

While these programs are a good start, more needs to be done if the teacher shortage problem is going to be resolved.

The Public Education Forum of Mississippi convened a task force in 1998 to examine factors contributing to public school educators leaving the profession.[77] The task force determined that the three highest factors, in descending order, were "inadequate salary," "discipline problems," and "better job opportunities."[78] During the hearing, the following were suggested as possible reasons why teachers are leaving the profession:

- *High pupil-to-teacher ratio.*[79] There was testimony at the hearing that a high pupil-to-teacher ratio, especially when there is a wide divergence of talent in the classroom, can lead to discipline problems and other stress factors that can contribute to a teacher's decision to leave the classroom.[80]
- *Reducing years of service required before retirement from 30 years to 25 years.* Some argue this is good because it allows teachers who are "burned out"—or those teachers who are merely biding their time until they can retire—to go ahead and leave.[81] Thus, lowering the minimum number of "years of service" required for retirement can entice unproductive teachers to leave the profession.[82] However, this policy change can also lead to a loss of highly productive teachers: Many teachers, when they reach their 25th year of teaching, will retire from the state and then go teach in a private school or across the line in another state. They can then draw retirement benefits from their 25-year teach-

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[74] There was testimony at the hearing that some teachers in Mississippi have been seeking relief from student loan debt through bankruptcy proceedings, suggesting that increased state funding of teacher-training scholarship programs might be helpful in convincing college students to enter the historically moderate-paying field of teaching. Buck Testimony and Cheney Testimony, Hearing Transcript, p. 196.

[75] Hemphill Testimony and Mullins Testimony, Hearing Transcript, pp. 123, 141–42, 145.

[76] It was pointed out during the hearing that the state has "a lot of potential teachers that go begging because there's not enough money in the William Winter Scholarship Program to give them a scholarship, and they qualify for it." Mullins Testimony, Hearing Transcript, p. 124.

[77] The task force issued a report in November 1998 titled *Quality Teachers, Every Child's Educational Birthright*. It is available from the Public Education Forum of Mississippi, Jackson, MS.

[78] Ibid., p. 9.

[79] On Oct. 21, 1998, President Clinton signed into law the Class Size Reduction Initiative. School districts received a total of $1.2 billion in school year 1999–2000 to hire more than 30,000 new teachers in the early grades. This is the first phase of a plan to hire 100,000 teachers over seven years to reduce average class size in grades one through three to 18 pupils per teacher. Mississippi's allocation of $19,208,820 will enable an estimated 494 new teachers to be employed. Ibid., p. 12.

[80] Mullins Testimony, Hearing Transcript, pp. 102–03, 106. At the hearing, Commission Vice Chair Reynoso asked Dr. Mullins why teachers in the Mississippi Teacher Corps program become cynical shortly after being placed into the classroom. Dr. Mullins reported that many teachers "have the look of shell shock victims in their eyes" shortly after entering the classroom setting because student reading levels within a single class of 30 students, for example, might range from fifth grade to college readiness. Ibid., p. 114.

[81] Commission Chairperson Berry stated during the hearing: "In most school districts across the country one of the significant problems is teachers who have been on the job a long time, who are burned out, and they would like to have early retirement plans so that they can retire them out . . . and get some new blood. . . ." Hearing Transcript, p. 139.

[82] Mullins Testimony, Hearing Transcript, p. 115.

ing career in Mississippi, in addition to a salary from another school or state.[83]

- *Poor administrator support and mentoring.* Some of the Mississippi Teacher Corps teachers have reported that they are placed into a classroom with little or no help from the school administrator or from fellow teachers, even though everyone knows the teachers have no classroom experience.[84] There was also testimony at the Mississippi Delta hearing on the importance of implementing a "master teacher" program that would provide mentoring to new teachers. Each new teacher would be assigned an experienced "master teacher" for one year, who could nurture the new teacher's growth and advancement as an educational leader in the school.[85]

Desegregation of the Public Schools

Mississippi has had a history of denying equal educational opportunities to its minority children. For the first 50 odd years of this century, Mississippi's system of public education was one of "separate and unequal" for blacks.[86] In 1916, the per capita expenditure for each white child of school age in Mississippi was $10.60, and for each black child, $2.26. In 1939, for every $9.88 spent for white instruction, $1 was spent on blacks. The 1943 ratios were $8.27 to $1.75 for whites and blacks, respectively.[87] In anticipation of *Brown v. Board of Education,*[88] and hoping to weaken the case against segregation, the state enacted legislation calling for equal resources for both black and white children and attempted to promote a public education system that was "separate but equal."[89]

Erle Johnston, former state director of the controversial Mississippi State Sovereignty Commission (1963–1968), writes that no state fought harder than Mississippi after *Brown* to thwart integration and discourage blacks from enrolling in all-white public schools.[90] Only after the U.S. Supreme Court's rulings in two other important school desegregation cases, *Green v. County School Board of New Kent County*[91] and in *Alexander v. Holmes*[92]—a full 15 years after *Brown*—did Mississippi seriously begin the process of integrating its public school system.

By that point, white flight may have rendered school integration plans largely ineffective. There was significant white flight to private schools in the 1960s and 1970s, and to predominantly white suburban communities in the 1980s and 1990s. Indeed, white flight now has left Mississippi public schools not much more racially diverse than they were before desegregation began.[93]

A dramatic rise in private all-white schools in Mississippi occurred in the late 1960s. In the 1963–1964 school year, there were only 17 private schools, enrolling 2,362 students (916 of whom were black). By September 1970, there were 155 private non-Catholic schools, with an estimated student population of 42,000.[94] In the Jackson school district, 9,000 of its 39,000 students left the public school system from September 1969 to September 1971.[95]

A white journalist who was a first grader in Leland, Mississippi, a small Delta town that began its first year of integration in 1971, wrote:

> After the Court's ruling, a flood of hysterical white Mississippi families fled to newly created segregationist academies-schools with Confederate-colonel mascots and rebel flag logos. . . . For white Mississippians who considered themselves enlightened, the idea of sending their children to all-white private schools twenty-five years ago was taboo . . . But today, those crude segregationist trappings have largely fallen away. . . . Today, many of the children of the early

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[83] Ibid., p. 105.

[84] Ibid., p. 115.

[85] Ibid., p. 142.

[86] As Dr. Hemphill stated during the hearing: "I had a very difficult time personally early in the [school desegregation] process wondering why separate but equal wasn't a satisfactory solution. . . . Just a short while after I transferred over to the black high school in Starkville I understood why separate but equal was not a viable solution. It did not take long to realize that the separate and equal concept was separate and equal had nothing to do with it." Hearing Transcript, p. 79.

[87] Charles H. Wilson Sr., *Education For Negroes in Mississippi Since 1910* (Boston: Meador Publishing Company, 1947), p. 58.

[88] 347 U.S. 483 (1954).

[89] Erle Johnston, *Mississippi's Defiant Years* (Forest, MS: Lake Harbour Publishers, 1990) p. 3.

[90] Ibid., p. xiii.

[91] 391 U.S. 430 (1968).

[92] 396 U.S. 19 (1969).

[93] Cathy Hayden, "White Flight Reverses Desegregation Efforts," *The Clarion-Ledger*, July 9, 1995, p. 1A (hereafter cited as Hayden, "White Flight").

[94] *See* Norwood v. Harrison, 413 U.S. 455, 457 (1973).

[95] Hayden, "White Flight," p. 1A.

white graduates of Leland's integrated public schools are attending private academies.[96]

As one black state legislator explained it: "We just all quietly go about our own way. Folks from the academy ask me from time to time if I can help them find any good black children . . . I say 'What for?' "[97] This same sentiment was expressed in an interview shortly before the Mississippi Delta hearing by Robert Davis, a professor of law at the University of Mississippi, who was an expert witness at the hearing:

> When it comes to interacting socially, the atmosphere in Mississippi is different from other parts of the country. The different races are not comfortable with each other—separation seems to be promoted in different ways, including in professional groups, in social groups, in churches, etc. You basically have two societies that go about their lives and only get together when they have to. People don't seem to want bridges built.[98]

Of course, there was also testimony at the hearing to suggest that important social interaction is starting to take place among the races. According to Dr. William Sutton, president of historically black Mississippi Valley State University:

> I can see some changes . . . in the communities and the rotary clubs and on bank boards and also in the chambers of commerce that we are beginning to participate a bit more, and that will help, but we have a long ways to go.[99]

In March 1998, members of President Clinton's Advisory Board on Race gathered at the University of Mississippi for a forum dedicated to gauging the community's progress on race. One newspaper reported that "the old South and the new one clashed":

> A black student and a white student from Oxford High School declared their friendship with a heartfelt hug, but also pointed out that black and white students segregated themselves at lunch. Black speakers complained about the lack of a black doctor in town, adding that a non-white physician would have trouble attracting white patients. When a white man in the audience stood to proclaim that it was his "freedom" to wave the Confederate flag at Ole Miss football games, a white student responded by saying that most students would appreciate it if he did not.[100]

Some observers maintain that for both blacks and whites there is social pressure not to send their children to schools where they will be in the minority.[101] Moreover, testimony at the Mississippi Delta hearing points out that as private schools flourish in a given community, support for the public schools can wane. Dr. Love, special assistant to the state superintendent, stated:

> I think the most dramatic impact the private schools [have] on public schools ha[s] to do with divided loyalties and community support for your public schools. I've worked in districts where there was very little private schooling, like Tupelo, and we enjoyed a great deal of communitywide [support] from local businesses and others. I think in the Delta on the other hand . . . you may have divided loyalties. . . . And that I think is the most crucial factor in terms of development of academies versus some other things. That's where the impact tends to be most negative.[102]

Robert Buck, counsel for the Greenville Public School District Board of Trustees, testified that he, too, believes private academies can drain away support from the public school system, especially due to the economic burden placed upon parents who send their children to private schools:

> If you have persons who pull their children out of a school system into a separate school system, as a result of the desegregation of public schools that took place in the '60s and the '70s, you have those persons now having to devote their resources to support the private academies, and at the same time pay ad

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[96] Douglas A. Blackmon, "The Resegregation of a Southern School," *Harper's Magazine*, September 1992, pp. 15–17.

[97] Rene Sanchez, "Academies are Final Bastions of Separateness," *The Washington Post*, July 17, 1996, p. A1.

[98] Robert N. Davis, University of Mississippi, associate professor of law, telephone interview, July 25, 1996.

[99] Sutton Testimony, Hearing Transcript, p. 250.

[100] Kevin Sack, "In the South, the Past is Present," *The St. Petersburg Times*, Mar. 29, 1998, p. 1D. At the same forum, it was reported that former Governor William Winter, a member of the advisory panel, and John Hope Franklin, the historian who serves as its chairman, both commented on the progress reflected in the simple fact that such a discussion was being held at the University of Mississippi, a place with a history of racial strife. The university's chancellor, Robert Khayat, who has tried to tone down Confederate symbolism at the school, said events in the South "move forward and backward, seldom in a straight line." Ibid.

[101] Ward Interview.

[102] Love Testimony, Hearing Transcript, p. 93.

> valorem taxes to support the public school system. I think it almost necessarily follows that those persons whose resources are now being stretched are going to be opposed to anything that would mean an increase in tax rates . . . It certainly is my impression, based on my observation and also the impression of many people that I talk to that in fact there has been an adverse effect upon support for public education as a result of the proliferation of private academies.[103]

The problems surrounding the increase of predominately white private academies have plagued one small community in Tunica County for several years. Most residents of Tunica County are black, poor, and poorly educated.[104] In Robinsonville, a small unincorporated area in Tunica County, local officials are planning to build an $8 million state-of-the-art elementary school for students in the area. At first glance, the proposed plan would appear to directly benefit the residents of Robinsonville. But in the area immediately surrounding the property where the school is to be built, an upscale residential development is also scheduled to be built.[105] This development will undoubtedly attract higher income white families. As a result, area residents have organized with state and local officials to oppose the school, which many view as another plan to perpetuate the pattern of segregation that exists across the region.[106]

Because Tunica County schools are operating under a 1970 mandatory desegregation order, the school board has to get approval from the Department of Justice before it can build a new school.[107] To date, the Justice Department has refused to approve the plan, noting the likelihood that the new school would be populated by the predominately white residents of the surrounding residential development, and recommended other sites for the proposed plan that had a higher percentage of black students.[108] Even if the Justice Department and the school board reach an agreement, the plan must then be approved by a federal judge.[109]

Some observers consider *Brown v. Board of Education* the "moral pinnacle" in the struggle for equality of opportunity between whites and African Americans.[110] Others view public school desegregation as destructive to black identity and destructive to black control of the educational process for their children.[111] Whatever one's view, it is clear that efforts to desegregate public schools in the Delta have largely failed. Dr. Arthur G. Cosby, a sociologist at Mississippi State University, suggests that the failure of the Mississippi school system to achieve integration has had a negative impact on education overall. He argues that while it appears that there are substantial resources being spent on education, these resources are greatly fragmented, resulting in a wasteful duplication of effort, a failure to achieve economies of scale, and suboptimal results from the resources that are spent.[112]

The Link between Community Leadership, Successful Schools, and Integration

Dr. Hemphill testified that community leadership is absolutely paramount to successful schools:

> We see many times that the most important reason students are not achieving is leadership, not necessarily funding, but leadership, and not necessarily educational leadership, but leadership in the communities. You have a community that expects a school district to provide a superior product, you'll have a good school district. If you have a community that doesn't expect that, then they probably will not do it.[113]

Roger Malkin, chairman of the Delta and Pine Land Company in Scott, Mississippi, testified that he thought part of the problem with public education—at least in the city of Greenville—was that the all-black school board

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[103] Buck Testimony, Hearing Transcript, pp. 170–71.

[104] Bob Herbert, "Mississippi Learning," *The New York Times*, May 13, 1999, p. A31.

[105] Ibid.

[106] Sam Skolnik, "Mississippi 1999: New Era, Old Fight," *Legal Times*, Aug. 2, 1999.

[107] Bob Herbert, "Haunted by Segregation," *The New York Times*, May 16, 1999, p. 17.

[108] Skolnik, "Mississippi 1999."

[109] Ibid.

[110] Wendy R. Brown, "School Desegregation Litigation: Crossroads or Dead End?" *St. Louis University Law Journal*, vol. 37 (1993), pp. 923, 937.

[111] *See* Alvis v. Adair, *Desegregation, The Illusion of Black Progress* (Lanham, MD: University Press of America, Inc., 1984).

[112] Cosby, "Framing the Future," p. 323.

[113] Hemphill Testimony, Hearing Transcript, p. 89. Dr. Hemphill argues that Hollandale, one of the poorest school districts in Mississippi, is an example of an excellent school district that has excellent leadership. Ibid., p. 91.

"is in favor of mediocrity, they're not particularly in favor of excellence."[114] Mr. Malkin argued that there was a "leadership problem" in the black community, and he expressed discouragement over his belief that "the blacks who have made it, and there are a lot of . . . financially successful blacks in Greenville, they never show up at public school meetings."[115] Furthermore, testified Mr. Malkin, commitments to desegregation and integration would not take place until the public schools improved:

> What we must do everywhere in the United States is we've got to improve public education so it is a bargain. People don't think they're getting their money's worth any more, white and black, and I think the critical thing is to improve education in the public sector and they will come. Build it and they will come.[116]

But according to Dr. Mullins, schools in the region have always been lacking.[117] He explained in a recent Mississippi news article, "You had an all white Legislature, with only one or two blacks as late as 1968. There wasn't much interest in improving the schools."[118] In describing one of the reasons that black schools were systematically neglected and underfunded, Dr. Mullins said, "You didn't want to educate a good field worker because they'd leave the field."[119]

In Mississippi, it is estimated that there are approximately 500,000 students in the public school system (K–12), and approximately 50,000 in nonpublic schools (including approximately 35,000 in private academies, 10,000 in parochial schools, and 2,000 students in Episcopal schools).[120] It is estimated that approximately 50 percent of the public school students are black,[121] that approximately 25 to 30 percent of the parochial students are black,[122] and that less than 2 percent of the private academy students are black.[123]

But these numbers fail to illustrate the point that schools in some parts of the state are much more segregated and homogeneous than in others. In the Delta, many of the school districts are 95, 96, and 97 percent black.[124] Dr. Love testified at the Mississippi Delta hearing, "If you spent most of your life in the Delta, you [would] think every public school in the state was all black."[125] Dr. Mullins concluded that in the Delta, "[a]ll the whites went to private schools."[126]

Resegregation of the Public Schools

The resegregation of children in America's schools has increased progressively since the 1980s. According to Harvard University education professor Gary Orfield, segregation of blacks in the South declined dramatically from the mid-1960s through the early 1970s, was stable until 1988, and has been rising since that time.[127] Orfield reports that in 1991–1992, 36.6 percent of black Mississippi students were in schools with 90–100 percent minority populations.[128]

The typical white student in a Mississippi public school attended a school with an average population of 31.5 percent black students.[129] In total, blacks make up 51 percent of the total public school population in Mississippi. Of the public

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[114] Malkin Testimony, Hearing Transcript, p. 190. As an example of favoring mediocrity, Mr. Malkin said that it was "outrageous" that the Greenville School Board opposed creating a magnet school "because they're afraid it's only being used to attract whites." Ibid. Mr. Malkin argued that magnet schools are part of "the perfect setting for overachievers to settle and raise their children," and are therefore necessary to entice business elites to the area. Ibid., p. 192.

[115] Ibid., p. 190.

[116] Ibid., pp. 201–02.

[117] Hayden, "Delta Schools Search for Answers."

[118] Ibid.

[119] Ibid.

[120] Hemphill Testimony, Hearing Transcript, p. 95.

[121] Ibid., p. 96.

[122] Mullins Testimony, Hearing Transcript, p. 94.

[123] Ibid., p. 95. Dr. Love testified that "many of [the academies] would claim to have open door policies or a vast majority of them will claim that they do. Nobody walks in but they're open." Love Testimony, Hearing Transcript, p. 129.

[124] Love Testimony, Hearing Transcript, p. 96.

[125] Ibid., p. 96. Dr. Love testified that the concentration of "very integrated" schools is in northeast Mississippi and the southern part of the state, while the western side of the state—from Tunica down to Woodville along the river—is "predominantly black." Ibid.

[126] Ibid. *See also* testimony of Mr. Buck, who reported that "almost all" of the white school-age children in Greenville, Mississippi, attend private academies because that school district is "ninety-something percent black." Buck Testimony, Hearing Transcript, pp. 169–70.

[127] Gary Orfield, *The Growth of Segregation in American Schools: Changing Patterns of Separation and Poverty Since 1968*, Council of Urban Boards of Education Steering Committee, December 1993, p. 1.

[128] Ibid. Illinois, Michigan, New York, New Jersey, Pennsylvania, Tennessee, Alabama, Maryland, and Connecticut all had higher percentages of segregation than Mississippi.

[129] Ibid., p. 6.

TABLE 2.3

Percentage of Black and White Children in Mississippi Delta and Peripheral Delta Public Schools

	District population		School population	
School district	**% white**	**% black**	**% white**	**% black**
West Bolivar	23.9	75.6	5.1	94.1
North Bolivar	18.7	80.5	1.9	98.6
Coahoma County	30.0	69.2	2.7	96.0
Holmes County	21.9	77.9	0.1	99.9
Humphreys	31.8	68.1	3.3	96.6
Leflore	34.8	64.9	4.7	95.2
Quitman County	40.5	58.5	4.2	95.7
Sunflower	32.3	67.1	2.6	97.4
Clarksdale Separate	37.6	62.1	21.2	78.2
Cleveland County	49.7	49.3	27.5	71.6
Indianola	34.7	64.6	6.5	93.3
East Tallahatchie	51.0	48.8	33.3	66.7
West Tallahatchie	27.9	71.4	6.3	99.7
Tunica	24.4	75.4	1.4	98.6
Greenville Public	36.0	63.4	7.5	92.3
Western Line	67.0	32.1	44.1	54.9
Yazoo County	59.7	40.0	30.6	69.3
Yazoo City Municipal	35.2	64.4	13.8	86.1
South Delta	36.3	63.4	6.2	93.8
Drew	41.3	58.4	16.7	83.3
Shaw	32.7	67.3	5.1	94.8
Benoit	31.5	68.5	1.53	96.6
Mound Bayou	0.8	99.2	0.2	99.8

NOTE: Numbers may not add up to 100%, reflecting other races.
SOURCE: State of Mississippi, Department of Education, Office of Accountability Reporting, *Mississippi Report Card '95.*

school districts, 67 are 60 percent or more black and 56 are 60 percent or more white. Only 30 school districts are close to being racially balanced with a white/black ratio of 40 percent white to 60 percent black.[130]

In some parts of the state where private schools were created in direct response to the desegregation orders, whites have returned to the public schools. This is not the case in the Delta, however, where the vast majority of white children attend private or religious schools and black children attend schools that are overwhelmingly black public schools.[131] For example, in Holmes County, while the district population is 21.9 percent white, the public school K–12 enrollment is only 0.1 percent white. As table 2.3 indicates, these figures are representative of all school districts in the Delta.

Testimony at the Mississippi Delta hearing suggested that it is unrealistic to imagine that the private academies would ever be closed, leading to an integration of the public and private school systems.[132] Dr. Mullins remarked:

> I don't think that you can do that. I think that [it is] unrealistic to think of doing that. I think it's a waste of energy to even try to attempt to do that. The way you address that problem is to make your public schools as good as you can make them . . . These are private entities and you start trying to interfere in their business, I think you'll see a backlash that will hurt throughout the communities.[133]

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[130] Hayden, "White Flight," p. 1A.

[131] Mullins Interview.

[132] Mullins Testimony, Hearing Transcript, p. 130.

[133] Ibid.

Dr. Love concurred with this testimony, adding that if the predominantly black public schools improve, it might sway some white students to attend. However, Dr. Love cautioned that the integration would likely be modest—say, moving a school from 97 percent black to 90 percent black.[134]

Tracking

Some argue that even when a school is numerically "integrated" with both black and white students attending the same school, resegregation can occur inside the schoolhouse walls if students are "tracked" into different levels of courses.

Testimony at the Mississippi Delta hearing regarding tracking was contradictory. Dr. Hemphill testified that while tracking was a tool used early in the desegregation process, "I don't think it happens much any more."[135] According to Dr. Hemphill, there is an accreditation system—or a performance-based system that emanated from the 1982 Education Reform Act—which was to improve the quality of educational programs and ensure equal access to a quality education for all students:

> We have people in every district evaluating the testing procedures, and we the superintendent and the State Board of Education—are extremely serious, and so anything like tracking or those kinds of things that might have once been out there, might not be the best educative program, districts are quickly moving away from that.[136]

However, Rims Barber, director of the Mississippi Human Services Agenda, testified that he was "surprised to hear" anyone say that tracking has been phased out, saying, "We call them blue birds and red birds and buzzards, right, but if you're in the buzzard class, you know where you belong, right?"[137]

Mr. Barber also testified that the closely related phenomenon of "ability grouping," or using a test to divide the students into different groups based on academic ability, occurs in "many" school districts throughout the state. According to Mr. Barber, "[i]t may not even be policy any more. It may be just the way the principal in that school works. . . . [T]here is a fair amount of grouping and the lower groups tend to get trapped in it, tend to be the kids who get referred to special education in about the fourth grade."[138]

Special Education

There was testimony at the Mississippi Delta hearing that an agreement had been signed between the state of Mississippi and the Office for Civil Rights (OCR), within the U.S. Department of Education, to address the problem of overrepresentation of minority students in special education classes.[139] After investigating five school districts throughout the state, OCR found "significant statistical disparities in the percentage of African American students being placed in special education."[140] Rims Barber, director of the Mississippi Human Services Agenda, testified that while the OCR agreement represented "progress,"

> the general culture is that certain kids get pushed into the slow reading class and then into the special education class, at a certain age begin getting suspended, and then expelled or put into an alternative school.[141]

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[134] Ibid., p. 131. Dr. Love testified that "you have a number of these counties which by margin alone are between 51 and 70 percent black, so . . . there's only so much integration [that] can be achieved in those particular numbers. . . ." Ibid.

[135] Hemphill Testimony, Hearing Transcript, p. 97.

[136] Ibid., pp. 97–98.

[137] Rims Barber Testimony, Hearing Transcript, p. 153.

[138] Ibid., p. 185. Mr. Barber painted the following grim scenario during his testimony: "They get tracked in the first grade into the slow readers' class, right. By the time they get to fourth grade everybody else knows how to read pretty well except them. When they take the tests, they do poorly and they often get stuck in the special education program. They get a little larger, they start saying what the heck, I can't do this stuff. . . . they say something obscene in the classroom and get themselves tossed out for three days and then it happens again, and pretty soon they say hey, it's more fun on the outside, why don't I stay here. . . . [then they get rerouted into alternative schooling] or the prison system, whichever comes first." Ibid., pp. 185–86.

[139] Love Testimony, Hearing Transcript, pp. 98–99.

[140] Ronald Roach, "The Enforcer: An Interview with Raymond C. Pierce," *Black Issues In Higher Education*, July 24, 1997, p. 38. Mr. Pierce, the deputy assistant secretary for the Office for Civil Rights, states, "It is extremely important for parents and students and people who are concerned with the educational plight of African Americans in the state of Mississippi to be very mindful of this agreement because we will need their eyes and ears. The federal government needs help on these things. We need partners. There are many people who have an interest in making sure all the children in the state of Mississippi have access to quality education." Ibid.

[141] Barber Testimony, Hearing Transcript, p. 153.

During the hearing, Robert Buck, counsel for the Greenville Public School District Board of Trustees, also testified that there was "certainly . . . a problem with too many students being placed in special education."[142] He said the problem had been acknowledged by the Mississippi Board of Education and that there was an "effort" to deal with the problem:

> The fact is a lot of students are placed in special education because of cultural problems, environmental problems, as opposed to learning—the ability to learn . . . a distinction needs to be made when a child scores low on a test, whether the child is scoring low because of a cultural background, environmental problems as opposed to the inability to learn.[143]

Alternative Schools

Approximately one-fourth of 1 percent of the state's public school students are in alternative programs.[144] However, these students are concentrated in certain grades and geographic areas. There was testimony at the hearing to indicate that some geographic areas had 10 times the normal rate of placements,[145] and that placements to the programs tended to be "black male middle school students who are over age for their grade . . . having flunked once or twice."[146] Rims Barber testified that there were racial and ethnic "tensions" that resulted from this disparity, "particularly parents who feel like the system is not treating my boy fairly."[147] There was testimony at the hearing that about half of the students placed into alternative schools are black. Dr. Love, special assistant to the state superintendent, commented:

> I would say 75 to 80 percent of those who are in poverty are black. Those who come from broken homes and in some of the worst situations are black, and therefore, I think it's reasonable to assume those who get placed in alternative programs in larger numbers are going to be black.[148]

Rims Barber testified that while he did not have definite statistics, the alternative schools that he observed were "overwhelmingly black."[149] And according to Judith Browne, a senior attorney with the Advancement Project, a student's race may be a factor that influences a disciplinary decision:

> In school districts across the country, African-American and Latino children are constantly being suspended for the more discretionary offenses, such as "defiance of authority" and "disrespect of authority." These categories of conduct clearly provide more latitude for racial bias to play a part in the use of disciplinary measures.[150]

Historically, discipline problems in K–12 were dealt with by suspending or expelling troubled students.[151] To address these discipline problems, the State Legislature's juvenile justice committee—not the education committee—spearheaded the effort to create alternative schools for these students.[152]

As a result, Mississippi's school disciplinary actions have become increasingly harsh. Ms. Browne criticized the new "zero tolerance" measures because they "often fail to meet sound educational principles and, in many cases, their application simply defies common sense."[153] Ms. Browne added, "In many instances these policies are being unfairly used against African-American and Latino children and children with special needs."[154] Indeed, the quality of education that students receive at these alternative schools leaves much to be desired. According to the Advancement Project, "[s]tudents at a Mississippi alternative school meet their bus in front of the local police department, where they are disciplined by police officers, if necessary . . . Teachers merely act as monitors. They provide worksheets and grade them but do not explain the work."[155] Thus, there is no evidence that students will benefit from the structure or substance of alternative school programs.

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[142] Buck Testimony, Hearing Transcript, p. 175.

[143] Ibid., pp. 175–76.

[144] Barber Testimony, Hearing Transcript, p. 187. In the first half of the 1996–1997 academic school year, there were between 1,443 and 1,502 students placed into alternative school programs. Ibid., p. 186.

[145] Ibid., p. 187.

[146] Ibid.

[147] Ibid., p. 188.

[148] Love Testimony, Hearing Transcript, p. 100.

[149] Ibid., p. 154.

[150] Judith A. Browne, statement presented to the U.S. Commission on Civil Rights at briefing, "Civil Rights Implications of Zero Tolerance Programs," Feb. 18, 2000, pp. 3–4 (hereafter cited as Browne, Zero Tolerance Statement).

[151] Love Testimony, Hearing Transcript, p. 100.

[152] Ibid., pp. 101, 154.

[153] Browne, Zero Tolerance Statement, p. 1.

[154] Ibid.

In addition, the Advancement Project noted, "The increase of criminal charges filed against children for in-school behavior has been one of the most detrimental effects of Zero Tolerance Policies."[156] In a recent case, five black teenagers were arrested and charged with felony assault for throwing peanuts and pickles while on a school bus, after one of the peanuts accidentally hit the school bus driver.[157] Such a charge carries up to a $1,000 fine and five years in prison.[158] The students were suspended from school and had their school bus privileges revoked.[159] After an attorney intervened on the students' behalf, the criminal charges were dropped, but the students later dropped out of school due to a lack of transportation to their school, which was 30 miles from their homes.[160] In another case, an 8-year-old in Mississippi was suspended in October 1999 for kicking his teacher.[161] The child was not permitted to return to school for the entire year, and he was too young to be sent to an alternative school.[162] According to Ms. Browne, these stories "exemplif[y] the extremely harsh disciplinary approach that has taken over in many school systems, and the increasing invocation of the criminal justice system for minor school behavioral issues."[163]

Mr. Barber conducted a survey of the alternative schools and concluded that "many of the programs are not quality."[164] She reported that one superintendent told his surveying team, "I wouldn't put one of my good teachers over there with those kids."[165]

Mr. Barber also testified that alternative schools were being used as a "dumping ground," and the three principal cities that serve as migratory points for rural people in the area—including Greenville, Vicksburg, and Natchez—have the highest suspension rates in the state, nearly three times the state average.[166] He also testified that it is extremely difficult to get "good baseline data" that would enable him to determine how effective the alternative schools were at reducing student suspensions and expulsions.[167]

Moore v. Dupree

In June 1996, the U.S. Supreme Court considered the voting rights implications of the repeal of a law providing that school district borders be automatically extended when land is annexed by a municipality. In *Moore v. Dupree,*[168] the Court unanimously upheld a 1993 district court decision that a repeal of Miss. Code Ann. § 37-7-611 (1971), a part of Mississippi's 1986 Uniform School Law, failed to comply with section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1974).

Prior to 1986, section 37-7-611 had provided for the automatic incorporation of the school districts of annexed land. In 1986, the State Legislature changed the law to permit municipal school districts to expand their boundaries only with the express consent of *all* school boards involved.[169]

The voting rights issue focused on the fact that annexed residents could decide *not* to be included in a city school district but would still be able to vote for city council members, who in turn appoint the school board members. Thus, the annexed residents could indirectly vote for school board members of a school district to which they decided not to belong.[170]

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[155] The Advancement Project, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline*, June 2000, p. 12.

[156] Ibid., p. 13.

[157] Tony Plonetski, "Peanut, Pickle Melee Could Mean Jail for 5," *The Clarion-Ledger*, Aug. 31, 1999, p. 1A.

[158] Ibid.

[159] Browne, Zero Tolerance Statement, p. 3.

[160] Ibid.

[161] Ibid., p. 5.

[162] Ibid.

[163] Ibid., p. 9.

[164] Ibid., p. 154.

[165] Ibid.

[166] Ibid., pp. 154–55.

[167] Ibid., p. 156. Mr. Barber testified that it "was impossible to get good data, good baseline data to do a comparison to see whether the effect [of implementing alternative schools] was simply more kids being put in some alternative program, plus the same number being expelled, or was the alternative program actually keeping kids who would have been expelled in the schools." Ibid.

[168] 517 U.S. 1241 (1996).

[169] Miss. Code Ann. § 37-7-103 (1986).

[170] Dupree v. Moore, 831 F. Supp. 1310, 1312 (1993). *See* "Court Upholds Ruling on Miss. School Borders," *The Legal Intelligencer*, June 11, 1996, p. 6. *See also* 28 C.F.R. § 51.13(d), (e) ("any change in the boundaries of voting precincts . . . , and [a]ny change in the constituency of an official or the boundaries of a voting unit . . . requires preclearance").

The Supreme Court agreed with the lower court's finding that the state attorney general had failed to preclear the statute as required by *Clark v. Roemer*.[171] *Clark* held that a state must "identify each change as necessary if the Attorney General is to perform his preclearance duties under § 5."[172]

Michael Moore, the Mississippi attorney general, filed an action in the U.S. District Court of the District of Columbia requesting a declaratory judgment that the repealer law was in fact precleared. In response, the Mississippi State Conference of the NAACP has adopted a resolution stating its objection to the attorney general's proposed action.[173]

The *Dupree* case, which involved the city of Hattiesburg, is not the only example of this phenomenon. A companion to *Dupree* involves the Greenville municipality and its attempts to annex the Western Line School District.[174] In addition, Jackson County is considering annexing land in South Hinds County, which would effectively merge the Hinds County School District with that of Jackson.[175]

The legislative purpose in ending the automatic extension of school districts into annexed land is unclear. Some argue the legislative purpose is financial. When an urban district expands into counties and rural areas, the effect is that the urban district takes up the tax base of those outlying areas, making it more difficult for the outlying districts to operate and fund themselves.[176]

However, Robert Buck, counsel for the Greenville Public School District Board of Trustees, attributes the legislative purpose of the 1986 repeal to something else: racism. In a telephone interview shortly before the Mississippi Delta hearing, Mr. Buck stated:

> The reason for the opposition to the expansion of school districts is racial in a sense that white parents in annexed areas do not want to send their children to the Greenville public school district. After desegregation, the Greenville school system has been more than 90 percent minority, although the population is about 55 percent black. . . . [W]e believe that the answer is that there was a trend all over the state wherein municipal school districts were becoming majority black and there were annexations taking place in larger areas, including Hattiesburg and Jackson. At the same time, there were people moving out of the municipalities and into the suburban areas in an attempt to escape the municipal public school systems. Those moves were being negated by virtue of the fact that the municipalities were expanding.[177]

And Mr. Buck reiterated this position at the Mississippi Delta hearing when he said the following about the motivation behind the 1986 repeal:

> The underlying intent of the legislation was to make it difficult for districts such as Greenville and Jackson and Hattiesburg, where you have fairly large urban populations, and where unfortunately the public school districts are 90 percent black, 97 percent black, and whatever, to make it difficult for those districts . . . to then expand their lines out into the county . . . The motivation behind [the legislation was] at least in part an effort to curb or to control the expansion of what I would classify as urban, largely minority districts.[178]

Mr. Buck testified that a single unitary system of education would enhance the education of all the students.[179] Despite economies of scale or other economic advantages that would result from a unitary system of education,[180] the political reality appears to be continued migration of whites out of the urban areas[181] and continuing controversy over the 1986 repeal.[182]

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[171] 500 U.S. 646, 659 (1991).

[172] *Id.* at 646.

[173] Resolution of the Mississippi State Conference of the NAACP, Aug. 17, 1996.

[174] Greenville Pub. Sch. Dist. v. Western Line Consolidated Sch. Dist., 575 So.2d 956 (Miss. 1991).

[175] "Hattiesburg School Claims Court Victory," *The Clarion-Ledger*, June 11, 1996, p. 4B.

[176] Buck Testimony, Hearing Transcript, p. 166.

[177] Buck Interview.

[178] Buck Testimony, Hearing Transcript, pp. 166–67.

[179] Ibid., p. 172.

[180] Mr. Buck testified that "if you start off with a small pie and then you're splitting it up in five different ways . . . as opposed to having all of those districts combined and consolidated and utilizing the resources that are available to serve everyone and all of the children, I think that would be far more effective." Mr. Buck argued that when Warren County consolidated with Vicksburg, it led to better facilities and improved education. Ibid., p. 164.

In February 1997, the U.S. Supreme Court ruled, by a 7–2 vote, to allow the state of Mississippi to continue enforcing the 1986 repeal.[183] The U.S. Department of Justice subsequently precleared the repealer on May 7, 1998, and thus effectively settled the lawsuit.

HIGHER EDUCATION IN MISSISSIPPI—*U.S. V. FORDICE*

Background

Mississippi's system of public four-year universities was segregated by race from its inception in 1848 until 1962, when the first black student was admitted to the University of Mississippi by court order.[184]

The racial identifiability of Mississippi's eight public universities changed little during the decade following the landmark admission of James Meredith. The student composition of the University of Mississippi, Mississippi State University, Mississippi University for Women, University of Southern Mississippi, and Delta State University (collectively, "historically white institutions" or "HWIs") remained almost entirely white, while that of Jackson State University, Mississippi Valley State University, and Alcorn State University (collectively, "historically black institutions" or "HBIs") remained almost entirely black.[185]

Moreover, the racial identifiability of these institutions persists: in the fall of 1996, the on-campus undergraduate enrollment ranged between 75 and 85 percent white at each of the historically white institutions, and averaged nearly 98 percent black at each of the historically black institutions.[186]

In 1975, the parent of a Jackson State University student brought suit, claiming the state of Mississippi had, for decades, underfunded its historically black public universities. The plaintiff also argued that the state had not met the *Brown v. Board of Education*[187] mandate to dismantle segregated education with all deliberate speed.[188] The plaintiff argued Mississippi's higher education system was in violation of the 5th, 9th, 13th, and 14th Amendments to the United States Constitution; 42 U.S.C. §§ 1981 and 1983; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-4a. The United States intervened as plaintiff and alleged violations of the equal protection clause of the 14th Amendment and Title VI.[189]

For 12 years the parties attempted to resolve their differences through a voluntary dismantling of the prior segregated system. Unable to achieve ultimate agreement, the parties proceeded to trial in 1987.

The respondents—the Board of Trustees of State Institutions of Higher Learning (the College Board)[190]—maintained that the state had met the *Brown* mandate by adopting race-neutral policies. The U.S. District Court for the Northern District of Mississippi[191] and the Fifth Circuit Court of Appeals[192] applied their interpretation of the standard established in *Brown* and concluded that the state had fulfilled its affirmative duty to dismantle the former *de jure* segregated system of higher education through its adoption and implementation of good-faith, race-neutral policies and procedures in student admissions and other areas.

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[181] Mr. Buck testified that "in Greenville and Jackson and other fairly large urban areas in Mississippi . . . there's been migration of people out of the municipality into surrounding rural areas, which also ties us right back into the annexation question . . . and that's one of the reasons why you have a lot of opposition to the expansion of school district lines along with annexation lines. . . ." Ibid., pp. 171–72.

[182] Municipal judge and attorney Clell Ward stated he was not aware of a single black Mississippi legislator in office who had knowledge that the repeal was part of the Senate bill. According to Mr. Ward, one of the white state senators had inserted the legislation into a large package of repeal laws without the knowledge of any of the black legislators. Ward Interview.

[183] Dupree v. Moore, 519 U.S. 1103 (1997).

[184] *See* Meredith v. Fair, 305 F.2d 343, 344–45 (5th Cir. 1962), *cert. denied*, 371 U.S. 828 (1962).

[185] *See* United States v. Fordice, 505 U.S. 717, 722 (1992).

[186] Ayers v. Fordice, 111 F.3d 1183, 1190, n. 1 (5th Cir. 1997). *See also* Southern Education Foundation, *Miles to Go: A Report On Black Students and Postsecondary Education in the South*, Atlanta, GA, 1998, p. A39.

[187] 347 U.S. 483, 495 (1954) (*Brown I*).

[188] Brown v. Board of Education, 349 U.S. 294, 301 (1955) (*Brown II*).

[189] United States v. Fordice, 112 S. Ct. 2727, 2732–33 (1992).

[190] The board is responsible for the management and control of the eight public universities at issue in this case. Miss. Code Ann. § 37-101-1 (1996). Its general powers and duties include, *inter alia*, managing all university property, disbursing funds, establishing standards for admission and graduation, and supervising the functioning of each institution. *Id.* § 37-101-15 (1996).

[191] Ayers v. Allain, 674 F. Supp. 1523, 1564 (N.D. Miss. 1987).

[192] Ayers v. Allain, 914 F.2d 676, 692 (5th Cir. 1990).

The U.S. Supreme Court granted *certiorari.*[193] The Supreme Court vacated the judgment and remanded for further proceedings, holding that the mere adoption and implementation of race-neutral policies were insufficient to demonstrate complete abandonment of the racially dual system.[194] The Court stated:

> Even after a State dismantles its segregative admissions policy, there may still be state action that is traceable to the State's prior *de jure* segregation and that continues to foster segregation. . . . If policies traceable to the *de jure* system are still in force and have discriminatory effects, those policies too must be reformed to the extent practicable and consistent with sound educational practices.[195]

The application of the *Brown* principles to the context of higher education was confirmed: segregation and discriminatory policies that violate the equal protection clause of the 14th Amendment may still exist in higher education even after the removal of a *de jure* segregated system.[196]

Applying the new standard, the U.S. Supreme Court identified admissions standards, program duplication, institutional mission assignments, and continued operation of all eight public universities as a list of constitutionally suspect remnants of the prior *de jure* system,

> for even though such policies may be race neutral on their face, they substantially restrict a person's choice of which institution to enter, and they contribute to the racial identifiability of the eight public universities. Mississippi must justify these policies or eliminate them.[197]

On remand, the district court ordered each party to submit proposed remedies. Without conceding liability, the College Board responded by presenting a detailed proposal for modification of the higher education system.

Implementation of *U.S. v. Fordice*

In March 1995, U.S. District Court Judge Neal Biggers Jr. ruled that the state was perpetuating the vestiges of *de jure* segregation in the areas of undergraduate admissions, institutional mission assignments, funding, equipment availability, library allocations, program duplication, land grant programs, and number of universities.[198]

Judge Biggers ordered the state to spend more money to improve its historically black public universities. First, "diversity scholarships" would be funded to attract white students:[199]

- In 1997 and 1998, each historically black institution will spend approximately $150,000 on other-race diversity scholarships.[200]

Second, graduate programs would be added at Alcorn State and Jackson State:

- For Alcorn State University, the judge ordered the state to create a $5 million endowment, as well as matching grants of up to $4 million, to enhance its Small Farm Development Center. He also ordered the creation of an MBA program at Alcorn's off-campus center in Natchez.

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[193] Ayers v. Mabus, 499 U.S. 958 (1991).

[194] United States v. Fordice, 505 U.S. 717, 742–43 (1992).

[195] *Id.* at 729.

[196] The Court stated: "If the State perpetuates policies and practices traceable to its prior system that continue to have segregative effects—whether by influencing student enrollment decisions or by fostering segregation in other facets of the university system—and such policies are without sound educational justification and can be practically eliminated, the State has not satisfied its burden of proving that it has dismantled its prior system. Such policies run afoul of the Equal Protection Clause, even though the State has abolished the legal requirement that whites and blacks be educated separately and has established racially neutral policies not animated by a discriminatory purpose. Because the standard applied by the District Court did not make these inquires, we hold that the Court of Appeals erred in affirming the District Court's ruling that the State had brought itself into compliance with the Equal Protection Clause in the operation of its higher education system." *Id.* at 731–32 (citations omitted).

[197] *Id.* at 733.

[198] Ayers v. Fordice, 879 F. Supp. 1419, 1477 (N.D. Miss. 1995), *aff'd in part, rev'd in part, remanded*, 111 F.3d 1183 (5th Cir. 1997), *cert. denied*, 118 S. Ct. 871 (1998).

[199] The numbers of blacks or whites "enrolled" in a particular institution do not always convey a complete picture of how much integration is taking place on the campus. For example, Dr. William Sutton, president of historically black Mississippi Valley State University, reported that approximately 60 of MVSU's 2,200 students are white. He pointed out, however, that only 15 or 18 of those white students are on the main campus at Itta Bena; the rest are taking classes at a new off-site campus located several miles away in Greenwood. Sutton Testimony, Hearing Transcript, pp. 227, 232.

[200] Southern Education Foundation, *Miles to Go*, p. A36.

- For Jackson State University, the judge ordered the state to spend $20 million to establish an endowment and new programs in the fields of allied health (e.g., medical assistant), social work, urban planning, and business.[201]

All these programs have been approved by the College Board and have been funded.[202]

At historically black Mississippi Valley State University, Judge Biggers did not order the creation of new programs or endowments, but the state still decided to add graduate degree programs in the areas of elementary education and criminal justice.[203]

Many African American citizens of Mississippi heralded the *Fordice* decision as a major victory. Others, such as Dr. James D. Anderson, professor of education at the University of Illinois and author of the book *The Education of Blacks in the South, 1860–1935*,[204] compared the rulings in the case to "band-aids put on cancer." Dr. Anderson argued that the evidence brought before the court to demonstrate the existence of discrimination and inequality was "as persuasive as you'll ever get."[205] According to Dr. Anderson, the people involved in rectifying the situation were able to look at 130 years of Jim Crow and its negative impact on higher education, then address that negative impact with a "token remedy," and then "just move on." Dr. Anderson believes that the various remedies put into place were like "grains of sand on a beach of what was needed to be done."[206]

Dr. F. Kent Wyatt, president of historically white Delta State University, suggested that very few people embrace wholeheartedly the *Fordice* rulings.[207] Robert Davis, associate professor of law at the University of Mississippi School of Law and author of a law journal article titled "The Quest for Equal Education in Mississippi: The Implications of United States v. Fordice,"[208] said that dealing with the *Fordice* case and its aftermath "has been both a legal and a political process; it's been impossible to reach a consensus on many of the issues involved, and many of the problems involved will probably never be fully resolved."[209]

Scholarships Targeting White Students to Attend Historically Black Schools

The idea of targeting scholarships to whites to attract them to historically black colleges has generated controversy. Janell Byrd, a lawyer with the NAACP Legal Defense and Education Fund who specializes in higher education desegregation cases, said it was "bizarre and ironic" that the court favored race-conscious scholarship awards for whites and not for blacks, noting that the federal courts in a recent Maryland court case[210] have said that race-conscious scholarships for blacks to attend white state colleges amounted to unconstitutional reverse discrimination.[211] "At least [*Fordice*] seems to say that it is OK and constitutional to provide other-race and race-conscious scholarships, and that is an improvement over the Maryland ruling," Ms. Byrd said. "But in the long run [the *Fordice*] ruling doesn't seem to connect to the harm of lack of access for blacks to quality higher education that it was supposed to address."[212]

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[201] D. Hawkins, "*Fordice* Decision: Federal Judge Rejects Closing of Mississippi Black College in Desegregation Plan," *Black Issues In Higher Education*, Mar. 23, 1995, p. 6. The June 1998 order of the district court, following a status conference on the *Fordice* case, states that "the implementation and accreditation of bachelor's and master's programs in Business at Jackson State University has been achieved. Implementation of a Ph.D. program in Social Work at Jackson State University has been approved by the board and is in the process of being implemented." The court order also states that studies have been conducted by the board "on whether to implement certain programs at Jackson State University, including Engineering, Law and Pharmacy. . . ." Ayers v. Fordice, No. 4:75CV009-B-O, at 2–3 (N.D. Miss. June 4, 1998) (unpublished order).

[202] The Mississippi commissioner of higher education reported that "[a]ll of those programs have been approved by the Board and were funded this year at the rate of two million dollars for all six programs, to begin the first year of implementation." Dr. Thomas Layzell, Mississippi commissioner of higher education, Testimony, Hearing Transcript, p. 220.

[203] Sutton Testimony, Hearing Transcript, pp. 227–28. The June 1998 order of the district court, following a status conference on the *Fordice* case, directed the board "to conduct a study of programs that can be implemented at Mississippi Valley State University which will attract other-race students and so advise the court in a reasonable time. . . ." Ayers v. Fordice, No. 4:75CV009-B-O, at 2–3 (N.D. Miss. June 4, 1998).

[204] James D. Anderson, *The Education of Blacks in the South, 1860–1935* (Chapel Hill, NC: University of North Carolina Press, 1988).

[205] James D. Anderson, professor of education, University of Illinois, telephone interview, July 25, 1996 (hereafter cited as Anderson Interview). Another witness testified that a leading cause of the "dual structure" of the Delta is the "*de jure* problems in the past." Robert Davis Testimony, Hearing Transcript, p. 284.

[206] Anderson Interview.

[207] F. Kent Wyatt, president, Delta State University, telephone interview, July 29, 1996 (hereafter cited as Wyatt Interview).

[208] Robert Davis, "The Quest for Equal Education in Mississippi: The Implications of United States v. Fordice," *Mississippi Law Journal*, vol. 62 (1993), p. 405.

[209] Robert N. Davis, associate professor of law, University of Mississippi, telephone interview, July 25, 1996 (hereafter cited as Davis Interview).

Dr. Thomas Layzell, Mississippi commissioner of higher education, suggested that it might be quite some time—"more than a few years"—for the scholarships to cause any significant change toward integration, largely because it will take time for the historically black schools to add the professional programs and schools mandated by Judge Biggers. Moreover, even after these additions are made, it will take time for the schools to bolster their academic reputations to the extent required to attract white scholarship recipients.[213] Professor Davis suggested that a degree from a historically black institution currently has a "crippling effect" on the graduate as he or she enters the job market.[214]

Dr. James D. Anderson, professor of education at the University of Illinois, believes that scholarships are a good idea, but asks why they cannot also be used to attract minority students to historically white institutions. "Why should the burden for integration fall on historically black schools? Why can't historically white schools offer the same incentives for African American students to attend the historically white institutions?" he asked.[215]

Howard University Law School professor Ken Tollett Sr. appears to agree with Dr. Anderson, saying the *Fordice* decision "gives no consideration to the enhancement of schools for blacks. It all has to do with attracting more whites to black schools. I haven't seen anything about how to bring more black students in to white schools. The whole premise of the analysis is subtly white supremacist."[216]

School Closings and Mergers

Judge Biggers stopped short of ordering the closing of Mississippi Valley State University (MVSU), whose enrollment is overwhelmingly black, and merging it with predominantly white Delta State University (DSU), as the state had proposed.[217] Moreover, the judge directed in his ruling that the Mississippi College Board undertake further study of "any available educationally sound alternatives" to the proposed consolidation of the two schools.[218] The resulting report, titled *Transformation Through Collaboration: Desegregating Higher Education in the Mississippi Delta*,[219] which was issued in March 1996, concludes that:

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[210] In Podberesky v. Kirwan, 38 F.3d 147, 159–62 (4th Cir. 1994), *cert. denied*, 514 U.S. 1128 (1995) the appeals court rejected a University of Maryland minority scholarship program, in part because the court concluded the program was not designed carefully enough to serve its stated remedial purposes.

[211] Ronald Smothers, "Mississippi Mellows on Issue of Bias in State Universities," *The New York Times*, Mar. 13, 1995, p. A14 (hereafter cited as Smothers, "Bias in State Universities").

[212] Ibid.

[213] Thomas Layzell, Mississippi commissioner of higher education, telephone interview, Aug. 6, 1996 (hereafter cited as Layzell Interview).

[214] Davis, "Quest for Equal Education in Mississippi," p. 496.

[215] Anderson Interview. Of course, the historically white institutions do have a number of scholarships for minorities; in fact, one College Board member has argued that the historically white institutions are able to attract the "best and the brightest" minority students by offering them scholarships to attend. J.P. Mills, member of the Mississippi College Board, telephone interview, July 1, 1996 (hereafter cited as Mills Interview).

[216] Ronald Roach and Cheryl D. Fields, "Mississippi Churning," *Black Issues in Higher Education*, May 15, 1997, p. 14.

[217] However, some people, including *Fordice* plaintiff attorney Alvin O. Chambliss Jr. and Joyce Payne, director of the public black college office of the National Association of State Universities and Land Grant Colleges, have criticized the judge for failing to give Mississippi Valley State more resources to attract white students and avoid closing in the future. *See* Smothers, "Bias in State Universities," p. A14.

[218] Ayers v. Fordice, 879 F. Supp. 1419, 1495 (N.D. Miss. 1995).

[219] The primary author of this report is Robert Kronley, senior consultant to the BellSouth Foundation and the Southern Education Foundation (SEF), located in Atlanta, Georgia. The SEF is a public charity committed to developing educational opportunities for minorities and disadvantaged citizens in the South. Robert Kronley, senior consultant, BellSouth Foundation and Southern Education Foundation, Testimony, Hearing Transcript, pp. 268–69; Southern Education Foundation, "Who We Are," <http://www.sefatl.org/whoweare.htm>. Mr. Kronley is the director of SEF's initiatives, *Educational Opportunity and Postsecondary Desegregation*, 1995, and *Miles to Go: A Report on Black Students and Postsecondary Education in the South*, 1998. A lawyer and educator, Mr. Kronley was previously director of the Southern Center for Studies in Public Policy.

> desegregated higher education in the Delta is not contingent upon consolidation of DSU and MVSU. Less drastic, more practicable and educationally sound alternatives are available. These alternatives can, over time, promote quality desegregated education—where choice of institutions and success in them is not dependent upon race. . . .[220]

There is clearly disagreement within the Mississippi educational community regarding closings and mergers of schools. On one hand, there is pressure to expand upon the current system by creating university "satellite centers" throughout the state. One such center is being developed in Greenville, Mississippi. Moreover, Dr. Layzell indicated that there is enormous pressure to expand such programming to the Mississippi Gulf Coast as well, as that is the fastest growing area in the state.[221] Dr. William Sutton, president of historically black Mississippi Valley State University, testified that such centers are being opened throughout the state to enable full-time working residents to also attend college.[222]

On the other hand, others argue that satellite centers are not necessary and that some of the eight public universities should be merged or consolidated. Robert Davis, professor of law at the University of Mississippi, argued against satellite centers because the state education system "should not be driven by a goal for economic support."[223] He believes the state university system can be supportive of the economy by producing highly skilled workers for businesses that want to locate to the state, adding that he has talked to business leaders and companies that have decided against locating to Mississippi because of the poor quality of education available in the state.[224] Professor Davis wrote:

> There is no reason for the State to attempt to continue the financing of eight universities. Mississippi currently funds fifteen two-year colleges and eight four-year colleges. Mississippi is the poorest state in the country and the least able to fund the schools that it supports. The State should work toward reducing the number of junior and senior colleges. This can be accomplished through merger, consolidation and closure.[225]

Professor Davis reported that at the law school where he teaches, the University of Mississippi, which draws students from all of the state's public universities, the general quality of education and level of preparation are "mediocre at best."[226] He suggested that the focus of the *Fordice* litigation has been on "preserving certain interests today" rather than the "quality of education 20 years from now."[227] He believes that "radical changes" are necessary to improve the quality of Mississippi's system of higher education, and says that the current course of action spurred by the court in *Fordice* will result in insignificant changes:

> What I see happening 25 years from now is we will continue to tinker with improvements at a variety of institutions. We will tinker with attempting to get white students to attend Mississippi Valley State. . . . Or we will continue to tinker with improving Jackson State. . . . But the system remains and these choices that have been made historically by African American students and majority students, I don't see how the tinkering that [Higher Education Commissioner Thomas Layzell] seems to be satisfied with will make any major adjustment to how our students exercise their choices, given the options.[228]

Professor Davis argued that if a "consolidation approach" is not given serious thought and study, the problem will continue to present itself as "we deal with ill-prepared students from our undergraduate institutions."[229] Specifically, he envisions a "unitary, statewide system" where some of the current universities could be used as branch campuses, but where duplication, waste, and inefficiency can be eliminated.[230] According to Professor Davis, this waste includes "eight college presidents . . . and all the attend[ant] administrative costs that go along with that."[231] Professor Davis argued that while such a move would be more costly initially, it would lead to cost savings in the long run.[232] Besides, he argued, even if consolidation did not yield a monetary savings, it should still be implemented in order to improve the quality of education and to bring about "the kind of quality . . . product that I think we all would be interested in seeing here."[233]

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[220] Robert A. Kronley, William A. Butts, and Walter Washington, *Transformation Through Collaboration: Desegregating Higher Education in the Mississippi Delta*, 1996, p. i (hereafter cited as Kronley, Butts, and Washington, *Desegregating Higher Education in the Mississippi Delta*).

[221] Layzell Testimony, Hearing Transcript, p. 261.

[222] Sutton Testimony, Hearing Transcript, p. 262.

[223] Davis Testimony, Hearing Transcript, pp. 319–20.

[224] Ibid., p. 320. Of course, there was testimony offered at the Mississippi Delta Hearing arguing that the state education system *can* compete. Roger Malkin, chairman and CEO of Mississippi's Delta and Pine Land Co., the world's leading cotton seed grading technology company, testified that his firm employs graduates of the local universities, especially Mississippi State, who meet the standards of his successful high technology company. Malkin Testimony, Hearing Transcript, p. 159.

[225] Davis, "Quest for Equal Education in Mississippi," p. 494.

[226] Davis Testimony, Hearing Transcript, p. 266.

[227] Ibid., p. 267.

[228] Ibid., p. 305.

[229] Ibid., p. 280.

The chairperson of the U.S. Commission on Civil Rights, Dr. Mary Frances Berry, asked whether it is possible that the state of Mississippi was attempting to support too many public universities, diluting the quality of the education being provided. Dr. Berry said:

> How in the world does the state of Mississippi have enough money to keep eight first-rate institutions of higher education going, when most states can't even keep one going? . . . I mean, are we seeing here simply a perpetuation of the inequities of the past and a sort of dumbing down of higher education in Mississippi to meet the requirements of what you can fund, and side stepping the whole issue of desegregation?[234]

Dr. Berry asked whether merging Delta State and Mississippi Valley State universities would result in the creation of a "first-rate institution" and asked whether it is "racial divide and politics" that are preventing such a merger.[235] Dr. Thomas Layzell, the commissioner of higher education, replied that, in America, politics always plays a role in higher education and that, besides, the consultants who looked at the issue of merging the two institutions determined that such a merger would be a poor choice from both an economic and educational standpoint.[236] Dr. Layzell said the issue of merger within the state of Mississippi "is dead, it's over with . . . we're moving on. We've got eight institutions."[237]

Rather than concentrating on merging institutions, Dr. Layzell said, the College Board's view is to "make each one of these eight institutions the best it can be at what it does."[238] And this conclusion was reflected in a June 1998 order of the district court, following a status conference on the *Fordice* case. The order stated that "the court will no longer consider the merger of Mississippi Valley State University and Delta State University, since the Board has stated to the court that this merger is not now deemed practical by the Board."[239]

Some have argued that school mergers and closings are more political than legal in nature, and therefore should be decided by the Legislature rather than the courts.[240] Mark Musick, president of the Southern Regional Education Board, an accrediting organization, said one thing that Judge Biggers' ruling showed was that federal courts can be as reluctant as state legislatures and governors to close universities and colleges: there are 38 historically black, publicly financed universities or colleges in the 19 states that once had segregated higher education systems, and in the last two decades of desegregation efforts, none has been closed.[241]

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[230] Ibid., p. 268.

[231] Ibid., p. 280.

[232] Ibid., p. 281.

[233] Ibid.

[234] Mary Frances Berry, Statement, Hearing Transcript, pp. 252–53.

[235] Ibid., pp. 253, 258–59.

[236] Layzell Testimony, Hearing Transcript, p. 253.

[237] Ibid., p. 254.

[238] Ibid. A review of studies of black public colleges concludes as follows: "Our empirical analysis suggests that segregative effects notwithstanding, HBCUs are indeed projects that improve social welfare, and rank favorably relative to HWCUs. The formal result derived here also has implications for the proposed remedies in the *Fordice* case, suggesting that HBCUs have a social value in the sense that in their absence, the stock of human capital would be lower. Where social welfare is an increasing function of output, an economy with HBCUs is better off than one without them. Given that HBCUs provide a boost to the human capital endowments of black college students, the consequences of their closure or merger with HWCUs will be a lower long-run growth rate."

The study goes on to state that "while our results suggest that HBCUs enhance social welfare, they should not be interpreted to suggest that state political jurisdictions should operate and maintain a dual system of separate but equal colleges/universities that perpetuate historical exclusionary and racist practices. If however HBCUs are unique in that they provide a boost to the educational effort of black students, then the choice of state political jurisdictions to operate and maintain HBCUs may have a sound educational justification." Gregory N. Price, "Black Public Colleges and Universities as Projects: How Do They Rank Relative to White Public Colleges and Universities?" *The Review of Black Political Economy*, vol. 24, no. 4 (Mar. 22, 1996), p. 65.

[239] Ayers v. Fordice, No. 4:75CV009-B-O, at 1 (N.D. Miss. June 4, 1998).

[240] Hawkins, "*Fordice* Decision," p. 6.

[241] Smothers, "Bias in State Universities," p. A14.

Robert Kronley, the primary author of *Transformation Through Collaboration: Desegregating Higher Education in the Mississippi Delta*, in explaining why the study recommended against consolidating Delta State University (DSU) and Mississippi Valley State University (MVSU), painted a picture of schools with very different faculty and student populations:

- MVSU's student body is nearly 99 percent black, compared with DSU, which is approximately 26 percent black.
- MVSU's entering class has lower ACT high school achievement test scores.
- MVSU's students come from lower economic circumstances.
- The faculties of the two institutions are "different in terms of [educational] degrees" attained.[242]

Moreover, Mr. Kronley reported that he had reviewed testimony from the president of DSU "which essentially said that were the institutions consolidated, it would be very, very difficult for many of the students traditionally admitted to Valley to thrive and . . . graduate at [DSU]."[243] Finally, Mr. Kronley studied the financial consequences of combining the institutions and concluded that it would cost "significantly more money"[244] to consolidate than it would to invest in upgrading both institutions pursuant to the final recommendations of his report.[245]

While opposing outright consolidation, however, Mr. Kronley and his team of researchers do advocate something he calls a "Delta student." Mr. Kronley defines such a student as one who "would enroll at any institution, whether it's a community college or a four-year institution in the Delta, but she would be able to avail herself of whatever resources were present at any of them. So it would be almost a common market of courses of opportunity to students throughout the Delta. . . ."[246]

Increased Admissions Standards for Historically Black Schools

Judge Biggers' decision imposes the same admissions standards for all of Mississippi's institutions of higher education. The new standards evaluate students on a blend of high school grades, class rank, teacher evaluations, and scores on standardized American College Tests (ACT). For years, admission was almost solely tied to ACT scores, a minimum of 15 (the top score is 36) at historically black universities and 18 at the five historically white institutions. Differential admissions standards, according to the district court, "resulted in the 'channeling effect' described in *Fordice*,"[247] which helped to maintain a racially dual system.

Under Judge Biggers' decision, high school graduates with at least a 3.2 GPA can gain automatic admission to any of Mississippi's eight universities. Those with at least a 2.5 GPA must score 16 or higher on the ACT. Students with a 2.0 GPA must score 18 or higher on the ACT.

The new admissions standards were challenged, but the U.S. Supreme Court refused to block their enactment.[248] Critics argued that their impact would be dramatic: *Fordice* plaintiff attorney Alvin Chambliss Jr. predicted that the higher standards would cause freshmen enrollments to drop 50 percent at Jackson State, Mississippi Valley State, and Alcorn State universities in 1996–1997; he said the new standards would "put the black schools behind 50 years."[249] Robert Kronley argued that the raised admissions standards put minority students at "great risk."[250]

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[242] Robert Kronley Testimony, Hearing Transcript, pp. 274–76; *see also* Kronley, Butts, and Washington, *Desegregating Higher Education in the Mississippi Delta*, pp. 8–11. The report, requested by the College Board, responds to the federal district court's directive to the board in its Mar. 10, 1995, Memorandum Opinion and Remedial Decree, to undertake further study of "any available educationally sound alternatives" to the proposed consolidation of Delta State and Mississippi Valley State Universities. Ayers v. Fordice, 879 F. Supp. 1419, 1495 (N.D. Miss. 1995).

[243] Kronley Testimony, Hearing Transcript, pp. 274–75.

[244] Mr. Kronley later stated that while he has determined there would be a "short-term" savings by not consolidating the universities, he has not investigated the "long-term" financial ramifications. Ibid., pp. 322–23.

[245] Ibid., p. 276.

[246] Ibid., p. 295.

[247] Ayers v. Fordice, 879 F. Supp. 1419, 1434 (N.D. Miss. 1995) (citing United States v. Fordice, 505 U.S. 717, 733–34 (1992)).

[248] P. Applebome, "Mississippi's Black Colleges Fear Equal Admission Standards, Some Say Enrollment Could Be Cut In Half," *The Commercial Appeal*, Apr. 28, 1996, p. A5.

[249] A. Kanengiser, "High Court Lets Tougher Admission Rules Stand," *The Clarion-Ledger*, December 1995, p. A1. In the same article, Mr. Chambliss said that some people had incorrectly perceived his position on the new admission rules as a desire "to have lower admission standards so black schools remain black enclaves." "That is not our position," said Chambliss. Ibid.

Proponents, on the other hand, saw the new standards as an effective and immediate means to rid the state of one of the vestiges of segregation—differential admissions requirements—identified by the Supreme Court, as well as an opportunity to align Mississippi's universities with national and regional trends toward higher standards.

The new standards were implemented in the fall of 1996. It has been reported by the Southern Education Foundation that between fall 1995 and fall 1996, full-time black freshman enrollment at Mississippi's public universities dropped by 463 students, and most of the decline was at the three historically black universities: the number of black freshmen dropped by 12 percent at Alcorn State, by 24 percent at Jackson State, and by 27 percent at Mississippi Valley State.[251] The foundation also reported, however, that this decline has been partially offset by increasing numbers of black freshmen enrolling at traditionally white institutions, as well as a 7.3 percent increase in the *overall* number of black students in the state's university system.[252] In a June 1998 order of the district court, following a status conference on the *Fordice* case, the court ordered the university to monitor "the various elements that affect freshman enrollment and advise the court of its findings."[253]

Dr. Elias Blake Jr., a consultant to the *Fordice* plaintiffs and director of the Washington, D.C.-based Benjamin E. Mays Center, said that what is needed is a way to "overturn this new legal doctrine that you can obey the mandates of *Brown v. Board of Education* for desegregation by increasing and perpetuating the historic denial of equal access to higher education and making opportunities for Black youth less equal." According to Dr. Blake, formerly the president of Clark College, a black college in Atlanta, "If [*Fordice*] stands, [it] will be a new kind of *Plessy v. Ferguson*. In *Plessy*, Blacks got legalized segregation that increased inequality of opportunity. . . . [The *Fordice*] opinion allows desegregation in higher education to be made the enemy of equality and opportunity."[254]

Others disagree with this assessment. For example, Dr. Leonard Haynes, a black college alumnus who serves as senior assistant to the president at American University in Washington, D.C., said he was confident that national education reform could equalize educational opportunities for students of color in K–12. "If the K–12 system improves itself, implementing uniform admissions standards in Mississippi's universities won't be a problem," said Dr. Haynes, formerly the assistant secretary for postsecondary education during the Bush administration.[255] However, according to Robert Kronley, there are some real questions in the Mississippi Delta about whether public schools currently offer curriculum of sufficient quality to prepare students to meet the higher standards. More importantly, said Mr. Kronley, there is nothing in the current plan that calls for systematic cooperation between K–12 education and higher education to ensure that there will be a change in the current situation.[256]

Dr. F. Kent Wyatt, president of historically white Delta State University, said he did not see any reason to be concerned about the changes made with respect to admissions standards. He said the new standards are not stopping any "legitimate" student from obtaining a higher education, adding that any hard-working, sincere student in Mississippi is going to be able to obtain higher education, whether it be at a four-year university or a community college.[257]

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[250] Kronley Testimony, Hearing Transcript, p. 317.

[251] Southern Education Foundation, *Miles to Go*, p. 45.

[252] Ibid.

[253] Ayers v. Fordice, No 4:75CV009-B-O, at 2 (N.D. Miss. June 4, 1998).

[254] Hawkins, "*Fordice* Decision," p. 6.

[255] Ibid. Mr. Mills also said that "the real problem is K–12" and that the current system, which is largely in disrepair, has no competitive forces pressing on it, and therefore has become "fat, lethargic, and inefficient." He notes that private schools in the state charge less than $3,000 in tuition, but the state spends $4,400 on each child; he claims that much of the excess money is "lost on layers of administration." Mills Interview.

[256] Robert A. Kronley, senior consultant, BellSouth Foundation and Southern Education Foundation, telephone interview, June 26, 1996 (hereafter cited as Kronley Interview). However, this appears to be changing. The state is now moving to link K–12 and higher education through such programs as college discovery programs, teacher training design centers, and summer institutes. In addition, a new state law, the Mississippi Adequate Education Program, states that every school district must receive "sufficient" funds to provide an adequate education. The state will provide an increase of at least 8 percent for education services in every district; the program will start in 1998 and will be phased in over a six-year period. Mississippi will spend about $130 million on this program, which gained approval from the Legislature over the governor's veto. *See* Southern Education Foundation, *Miles to Go*, pp. A35–A36. *See also* Christopher McEntee, "Mississippi District Inaugurates Bond Program to Enhance Fair School Funding," *The Bond Buyer*, Nov. 4, 1997, p. 3.

Finally, Robert Davis, professor of law at the University of Mississippi School of Law, suggests that the admissions process should be made far more flexible than the reforms have made it. He argued that some students do not perform well on standardized tests such as the ACT and he suggested that "testing abuses" might occur which can reduce the scores of minority test takers. Professor Davis argued that "everyone" should be let into Mississippi's eight public universities. He believes that if newly admitted students are not adequately prepared for the coursework at a four-year school, they will quickly fail out and can attend the community colleges.[258]

Summer Remedial Programs for First-Year College Students

Summer remedial programs in mathematics, reading comprehension, writing, and study skills have been implemented to help students who do not meet the new admissions requirements. Dr. Thomas Layzell, the commissioner of higher education, describes the nine-week programs as allowing "open admissions . . . to students who did not otherwise meet the uniform admissions requirement."[259] Students who complete the program can then choose any one of the eight state universities to attend, under the condition that they participate in a yearlong "academic support program" during the first year of study.[260]

Dr. Layzell reported that during the summer of 1996, approximately 210 students participated in the program, with nearly 200 students completing it successfully.[261] He said that while the vast majority of the students attended summer remedial programs at historically black institutions[262] and then proceeded to enroll in those same institutions, a "fair number" of the students enrolled in historically white institutions.[263]

The Southern Education Foundation reports that the number of students participating in the 1997 summer remedial program increased to 303 students, of whom 273 completed the program. Blacks accounted for 95 percent of the students in the program. Three-quarters of the students in the summer program—229 of them—were enrolled at one of the three historically black institutions. Of the 287 black students who began the program, 208 (72.5 percent) ultimately enrolled in the fall of 1997. All 15 of the white students who participated in the program enrolled in the fall of 1997.[264]

Since the summer program is so new, information is not yet available regarding the graduation success rates for the students admitted through the program. However, Dr. Layzell reported that data suggested that "they were doing fairly well in the fall term [of the 1996–1997 school year]."[265]

The programs last nine weeks, and only those students who complete a program successfully will be admitted to a university.[266] Dr. Roy Hudson, vice president for administration at historically black Mississippi Valley State University, said that if the new standards had been in place during the 1994–1995 school year, more than 40 percent of the school's students would have fallen into this new "conditional admission" category. And, Dr. Hudson added, "If that 40% of students who are trying to get into Mississippi Valley State, Alcorn State and Jackson State don't . . . we will lose them, period. Not even to a junior college."[267]

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[257] Wyatt Interview. J.P. Mills, a member of the Mississippi College Board, has noted that the summer remedial programs are designed to give students "every possible chance to be admitted" to one of the state's universities. Mills Interview.

[258] Davis Interview.

[259] Layzell Testimony, Hearing Transcript, p. 222.

[260] Ibid., pp. 222, 237.

[261] Ibid., p. 222.

[262] It was reported that, for the 1996 summer remedial program, there were two students enrolled at the historically white institution of Delta State and one at the University of Mississippi. At historically black Mississippi Valley State University, 76 students were in the program, 67 of whom completed it successfully. Sutton Testimony, Hearing Transcript, pp. 237–38.

[263] Layzell Testimony, Hearing Transcript, p. 224.

[264] Southern Education Foundation, *Miles to Go*, p. A35.

[265] Layzell Testimony, Hearing Transcript, p. 223.

[266] However, Thomas Layzell, Mississippi's commissioner of higher education, said there is enough flexibility in the system that students who do not meet the requirements could be admitted provisionally or after further review. Applebome, "Mississippi's Black Colleges Fear Equal Admissions Standards," p. 5A.

Fewer students, of course, would mean fewer dollars for the schools. Dr. James Lyons, president of historically black Jackson State University, estimated in the spring of 1996 that acceptances to Jackson could decrease by as many as 500 students for the coming school year. Such a drop in enrollment would cost the university $2.5 million out of a $57.4 million budget.[268] The decrease ended up being approximately half that amount—257 fewer students enrolled in 1996 than had done so the previous year—which still cost the university over $1 million.[269]

Others question the effectiveness of the summer remedial program as a tool for college preparation. Joyce Payne, director of the public black college office of the National Association of State Universities and Land Grant Colleges, said the planned summer programs were not likely to "wipe out the educational deficits built up over 12 years of black students going to antiquated and substandard" public schools.[270] Researchers at the Southern Education Foundation[271] appear to agree, stating that a court-approved summer program "will not substitute for a comprehensive educational remedy that will systematically address the poor preparation that many black Mississippians get in elementary and secondary education."[272]

Dr. James D. Anderson, professor of education at the University of Illinois, suggested students will be stigmatized by the summer programs. He argued that the way the programs are being set up sends a message to the rest of the students that "those students shouldn't even be here." Dr. Anderson believes that schools have enacted similar programs in the past in a way that does not stigmatize students; he said that care should be taken to do the same in this program.[273]

Finally, there is concern about the expense of the summer program. Depending upon the institution, the program costs between $1,900 and $3,000 per student. Robert Kronley, senior consultant to the BellSouth Foundation and the Southern Education Foundation, suggested that:

> [A summer remedial program is] not a very great incentive for a kid who comes out of the high school in the Delta to go to take—and doesn't qualify for immediate admissions, to decide that she really is going to go down the road, lose a summer job, have to pay money for this program, with the possibility that she's not even to be admitted to institutions.[274]

The Southern Education Foundation reports that, of the 717 students who were eligible for the summer remedial program for the 1996–1997 academic year, only 218 enrolled because 120 students missed the enrollment deadline and 379 chose not to or were otherwise unable to enroll. States the foundation's report: "Critics of the policy noted that students, particularly those from needy families, must work during the summer months and may have limited access to such a summer program."[275]

Moreover, the summer remedial program expense is being added to education bills that families are already struggling with: throughout the 1980s, the tuition and fees increased at both public and private institutions at twice the rate of inflation. In Mississippi, tuition at public colleges and universities is about 40 percent of the average minority income. But while costs are rising, tuition assistance is not. In 1976, students borrowed $1.20 for every dollar they received in federal grants. By 1995, students had to borrow approximately $4.30 for every dollar they received in grants.[276]

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[267] D. Hawkins, "Mississippi Mayhem," *Black Issues in Higher Education*, Mar. 21, 1996, p. 24.

[268] Applebome, "Mississippi's Black Colleges Fear Equal Admission Standards," p. 5A.

[269] *See* Southern Education Foundation, *Miles to Go*, p. 45.

[270] Smothers, "Bias in State Universities," p. A14.

[271] The Southern Education Foundation, located in Atlanta, Georgia, has issued reports on desegregation of higher education in the southern region, including *Redeeming the American Promise: Report of the Panel on Educational Opportunity and Postsecondary Desegregation*, 1995, and *Miles to Go: A Report on Black Students and Postsecondary Education in the South*, 1998.

[272] Southern Education Foundation, *Redeeming the American Promise*, p. 16.

[273] Anderson Interview.

[274] Kronley Testimony, Hearing Transcript, pp. 317–18.

[275] Southern Education Foundation, *Miles to Go*, p. A35.

[276] Southern Education Foundation, *Redeeming the American Promise*, p. 33. *See also* Kronley Testimony, Hearing Transcript, pp. 317–18.

The Appeal of *U.S. v. Fordice*

In April 1997, the U.S. Court of Appeals for the Fifth Circuit ruled on the appeal to Judge Biggers' March 1995 ruling.

Admissions Policies and Practices

The appeals court said the district court was within its discretion to implement uniform admissions standards[277] among the state's public university system.

In the failed appeal, plaintiffs made two challenges to the new admissions policy. First, they argued that it would significantly reduce the number of black students eligible for regular admission to the university system, and thereby disproportionately burden black students with a loss of educational opportunity.[278] Second, they argued that the court's reliance on the summer remedial program to compensate for the projected decline in regular admission of black students was inappropriate because the program was untested and incompletely defined at the time of trial. Moreover, they suggested that the summer program is not a viable option for the many black students who must work during the summer to pay for college in the fall.[279]

The appeals court ruled, however, that the district court was within its discretion to make admissions standards uniform throughout the four-year higher education system. The court noted that the differential admissions criteria of the *de jure* past "fostered both segregation of the races and the public perception that the institutions with lower standards—the HBIs—were of inferior quality."[280] Moreover, the court said, "*Fordice* does not require that all students who would have been admitted under the prior, unconstitutional admission standards be admitted under the reformed admission standards without regard to the educational soundness of the reformed standards."[281] The appeals court was careful to point out, however, that if the new admissions policy was unable to meet its objectives, then the court should implement an alternative solution:

> As contemplated, the new standards should result in the identification and admission of those applicants who, with reasonable remediation, can do college level work. . . . If . . . the spring and summer program is unable to any significant degree to achieve its intended objectives of identifying and admitting otherwise eligible applicants—i.e., applicants who could, with reasonable remediation, successfully complete a regular academic program—for whatever reason, then the program must be reevaluated. The District Court's proper retention of jurisdiction over this action indicates its intent to examine this important component of the admissions system once the relevant data becomes available.[282]

A study by the Southern Education Foundation suggests that the new standards have had a negative impact on access for entering black students: between fall 1995 and fall 1996, first-time, full-time black freshman enrollment at Mississippi's public universities dropped by 463 students. Most of the decline was at the three historically black universities: the number of black freshman dropped by 12 percent at Alcorn State, by 24 percent at Jackson State, and by 27 percent at Mississippi Valley State. With this decline, Mississippi in 1996 had fewer black freshmen and lower representation of them in the cohort than it did 20 years before.[283] And recent numbers indicate a continuing downward spiral. Between 1995 and 1999, the total number of black freshmen enrolled at the state's campuses dropped 17.3 percent.[284] And at black campuses, in 1999, 1,588 were enrolled compared with 2,314 in 1995.[285]

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[277] The new admission criteria standardized requirements at all eight universities beginning with applications for admission in the fall of 1996. Ayers v. Fordice, 111 F.3d 1183, 1195 (5th Cir. 1997).

[278] *Id.* at 1197.

[279] *Id.*

[280] *Id.* at 1199–1200.

[281] *Id.* at 1199. The appeals court also referred to the lower court's finding that admission of students unprepared to do college level work may result in significant attrition accompanied by unprofitable debt accumulation. *Id.* at 1198. The appeals court specifically referred to testimony before the lower court: "Defendants' expert, James Wharton, testified that access to four-year institutions in Louisiana is 'not meaningful access because we also have tremendous attrition and students get hurt in that attrition.' Likewise, Hunter Boylan testified that '[a]ccess without an opportunity to succeed isn't really access. If you have an open door it quickly becomes a revolving door.' " *Id.* at 1198–99, n. 31.

[282] Ayers v. Fordice, 111 F.3d 1183, 1201 (5th Cir. 1997).

[283] In 1976, there were 3,506 first-time full-time black freshman enrolled in Mississippi's public universities, representing 40.5 percent of all freshmen. In 1996, there were 2,750 black freshmen—which represented 38 percent of all freshmen. Southern Education Foundation, *Miles to Go*, p. 45.

[284] Randal C. Archibold, "The Price of Desegregation," *The New York Times*, Apr. 9, 2000, p. 22.

However, at the same time that first-time, full-time black freshmen enrollment is decreasing, the *overall* number of black students in the university system has *increased* by 7.3 percent since the new admissions standards went into effect. It is not entirely clear why this is the case, but the district court has directed the College Board to continue monitoring the various elements that affect enrollment figures and advise the court of its findings.[286]

Elimination of Remedial Courses

In ordering the new admissions policies, the district court tacitly approved the elimination of "most, perhaps even all" of the remedial courses that had been offered at all of Mississippi's four-year colleges and universities, most notably by the HBIs.[287] However, the court of appeals pointed to predictive data indicating that students admitted with the minimum qualifications required under the new standards are not predicted to achieve a C average during their first year in at least three of the historically white institutions. The court directed the lower court, on remand, to "determine if remedial courses are needed to help ensure that students admitted under the new admissions criteria have a realistic chance of achieving academic success."[288]

Following a status conference on the *Fordice* case, the district court stated in a June 1988 order that it "approved the request of the Board to continue remedial programs for some fully admitted students who are admitted under the new admissions standards and also for those students who successfully complete the summer programs."[289]

Scholarship Policies

The district court found that basing scholarship eligibility on ACT cutoff scores is not traceable to the dual system and does not have current segregative effects. However, the appellate court found otherwise.[290] The court said that because a scholarship requires a student to achieve a certain minimum ACT score to be eligible for the award, it follows that a student who has not achieved the requisite ACT score will not be considered, regardless of how impressive his or her grades or other academic achievements might be.

The court ruled this was "constitutionally problematic" for "the same reason the Supreme Court found the use of the ACT in admissions to be so."[291] The court said that just as there may be students who could do college level work yet might be precluded from enrolling in an institution that maintains ACT cutoffs in admissions, there may be students who have outstanding academic achievement that merits recognition apart from their ACT scores.[292]

The court pointed out, however, that the practice of rewarding academic achievement as determined by standardized test scores is not per se unconstitutional "even where it results in significant racial disparities in receipt of awards." Rather, said the court, the use of ACT cutoffs in the award of scholarships raises constitutional suspicion only because of the history of *de jure* segregation in Mississippi.[293] The court said:

> Use of ACT cutoffs does not take place on a clean slate in Mississippi, however. The alleged practice of basing scholarship eligibility on minimum ACT scores flows from earlier discriminatory use of ACT cutoffs and therefore triggers further constitutional inquiry, under *Fordice*, into whether it continues to have segregative effects.[294]

The court noted that district court findings and other evidence indicate "that scholarships with ACT cutoff scores are disproportionately awarded to white students," and that black applicants to Mississippi universities are more likely to need financial assistance than white applicants. The court observed that "[t]o the extent that academically accomplished black students are unable to achieve ACT scores that would qualify them for scholarships at the HWIs, they are discouraged from both applying to and matriculating at these institutions."[295] The court concluded that while the potential segregative effect of the use of ACT cutoffs in determining scholarship eligibility "is perhaps somewhat less pronounced than that of the use of ACT cutoffs in admissions," the evidence nevertheless indicated that such potential did exist.[296] The court thus directed the district court to "reform current policies consistent with sound educational practices," but added that "we do not hold that reliance on ACT scores for scholarship purposes must be eradicated *entirely*."[297]

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[285] Ibid.

[286] Ayers v. Fordice, No. 4:75CV009-B-O, at 2 (N.D. Miss. June 4, 1998).

[287] Ayers v. Fordice, 111 F.3d 1183, 1201 (5th Cir. 1997).

[288] *Id.* at 1202.

[289] Ayers v. Fordice, No. 4:75CV009-B-O, at 2 (N.D. Miss. June 4, 1988).

[290] Ayers v. Fordice, 111 F.3d 1183, 1207, n. 47 (5th Cir. 1997).

[291] *Id.* at 1208 (citing United States v. Fordice, 505 U.S. 717, 736 (1992)) ("Another constitutionally problematic aspect of the State's use of the ACT test scores is its policy of denying automatic admission if an applicant fails to earn the minimum ACT score specified for the particular institution, without also resorting to the applicant's high school grades as an additional factor in predicting college performance").

[292] *Id.*

[293] *Id.*

[294] *Id.*

In a June 1998 order of the district court, following a status conference on the *Fordice* case, it was determined that "use of ACT scores as the sole criterion in awarding scholarships has been eliminated. . . ." The College Board was directed to submit further information to the court "concerning the issue of the educational soundness of the use of ACT scores as a criterion *in conjunction with other factors* in the awarding of scholarships both at the historically white institutions and the historically black institutions."[298]

The Merger of Mississippi Valley State and Delta State

The appeals court stated that "all parties apparently have concluded that merger of Mississippi Valley State with Delta State is neither required nor desired."[299] The district court has since held that it will "no longer consider the merger" of the two institutions, and it directed the College Board to conduct a study of programs that can be implemented at Mississippi Valley State which will "attract other-race students."[300]

The appeals court strongly suggested that simply investing money into Mississippi Valley State will not, by itself, necessarily lead to integration:

> There was testimony that the Louisiana experience with implementation of a consent decree to desegregate public institutions of higher education was not successful in attracting white students to historically black universities, despite investment of over $75 million in new academic programs at those universities. The evidence showed that there was no correlation between dollars expended on new program implementation and white enrollment in those programs. During the six years (1981–87) that the Louisiana consent decree was in effect, white enrollment in predominantly black universities increased by just 1.1%, while black enrollment in predominantly white universities decreased from 56% to 47% of black enrollment in the system as a whole.[301]

The court of appeals did suggest, however, that well-planned programs which respond to the particular needs and interests of local populations can help to desegregate historically black institutions. Specifically, the court noted that evidence indicated that programs which are not duplicated at proximate institutions, are targeted to local demands, and are offered through alternative delivery systems (such as off-campus, evening, or weekend programs) have had success in attracting white students to historically black institutions in other states.[302]

Funding Analysis

The appeals court concluded that the present formula used to allocate funds among the different state universities does so as a function of the size of each institution's enrollment, faculty, and physical plant. The court noted that while the formula responds to conditions that to a significant degree have resulted from the mission designations (and consequently results in the historically white institutions receiving a greater proportion of funds), the manner in which the formula does so is guided by valid educational concerns and is not linked to any prior discriminatory practice.[303]

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[295] *Id.* (citing Ayers v. Fordice, 879 F. Supp. 1419, 1433–34, n. 28 (N.D. Miss. 1995)).

[296] *Id.*

[297] *Id.* at 1208–09 (emphasis added).

[298] Ayers v. Fordice, No. 4:75CV009-B-O, at 3 (N.D. Miss. June 4, 1998) (emphasis added).

[299] Ayers v. Fordice, 111 F.3d 1183, 1214 (5th Cir. 1997).

[300] Ayers v. Fordice, No. 4:75CV009-B-O, at 1–3 (N.D. Miss. June 4, 1998).

[301] Ayers v. Fordice, 111 F.3d 1183, 1213 (5th Cir. 1997). *Cf.* United States v. Louisiana, 692 F. Supp. 642, 645 (E.D. La. 1988) ("Despite the slight increase in black enrollment statewide, the racial polarization has increased as a whole during the term of the consent decree: the predominantly white institutions had about 2000 fewer black students in 1987 than in 1981, while the predominantly black institutions showed only a negligible increase in white enrollment from around 0.3% in 1981 to around 1.1% in 1987"). According to the three-judge court that reviewed the special master's final report in the Louisiana case, "[t]he experience of the consent decree confirms that enhancement of [predominantly black institutions] without more simply makes [predominantly black institutions] more attractive to black students, without attracting white students." United States v. Louisiana, 718 F. Supp. 499, 508 (E.D. La. 1989).

[302] Ayers v. Fordice, 111 F.3d 1183, 1214 (5th Cir. 1997).

Plaintiffs had argued that the district court should have considered adjustments to the funding formula in two respects, neither of which the court found to have merit. First, plaintiffs argued that the formula should be adjusted for the higher cost of remedial education, citing evidence that a disproportionately high number of black students in Mississippi are underprepared for college and that such an adjustment would encourage the historically white institutions to provide remedial courses and to attract black students and would aid the historically black institutions in providing the remedial instruction needed by their students. The court of appeals concluded, however, that the plaintiffs failed to identify any traceable policy related to the funding of remedial education, nor did they identify any evidence that remedial education as structured under the remedial decree is or is likely to be underfunded.[304]

Second, plaintiffs argued that the funding formula should be adjusted to take into account the proportion of students at a university who are in need of financial aid. The court of appeals concluded that the funding formula provided funds for scholarships and fellowships (which are only a portion of the total financial aid available to students at each university) on the basis of each university's tuition income. It is clear that the state universities which charge the highest tuition—the three comprehensive historically white institutions—also generally have the largest proportion of students who have little or no need for financial assistance. However, the court of appeals said the plaintiffs identified no traceable policy concerning the adequacy of scholarship and fellowship funds provided to the historically black institutions, and any potential segregative effects of the failure of the formula to take financial need into account is a function of the socioeconomic status of black applicants, not a traceable policy of the *de jure* system.[305]

The court of appeals did note, however, the lower court's determination that the quality of fixed equipment (such as science lab furnishings), technical equipment, and scientific equipment at the historically black institutions are inferior to that at the historically white institutions.[306] The appeals court made it clear that to the extent these disparities are attributable to the mission assignments and have segregative effects that will be reduced by additional funding, then relief may be in order.[307]

U.S. Supreme Court Rejects Further Review

On January 20, 1998, the U.S. Supreme Court, without comment, turned away the argument that the revised college admission plan and Mississippi's longstanding college funding formula have left in place remnants of the old segregated system.[308] The appeal, which failed, had argued that the state, by not dismantling its structures that maintained its dual system, was continuing not only to segregate, but also discriminate by discouraging blacks from attending college.[309]

Justice Department lawyers had advised the Justices to reject the appeal because further issues remain to be resolved by the lower court. But government lawyers said the nation's highest court may need to review the case in the future.[310]

Mississippi Senate Universities and Colleges Committee chairman Hillman Frazier (D-Jackson) said that the U.S. Supreme Court's decision should prompt more discussions among all sides in the suit. "The court has spoken. We know what the thinking is of all parties," he said. "This is a golden opportunity for the Legislature and College Board to get together and resolve this thing. It's been around too long." Frazier said the state should "send positive signals to the plaintiffs" that it wants to improve situations at the three historically black colleges.[311]

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[303] *Id.* at 1223–25.

[304] *Id.* at 1224.

[305] *Id.*

[306] *Id.* U.S. Representative Bennie Thompson, one of the plaintiffs in the *Fordice* case, had attended both a historically black public institution and a historically white public institution in Mississippi as a graduate student in the 1970s. He later reported that there was a stark difference—"like night and day"—in the quality of campus buildings, libraries, equipment and other facilities between the two schools. Roach and Fields, "Mississippi Churning," p. 13.

[307] Ayers v. Fordice, 111 F.3d 1183, 1225 (5th Cir. 1997).

[308] Ayers v. Fordice, 111 F.3d 1183, 1225 (5th Cir. 1997), *cert. denied*, 118 S. Ct. 871 (1998).

[309] Laurie Asseo, "Mississippi Desegregation Appeal Denied," *The Associated Press Online*, Jan. 20, 1998, *available in* LEXIS News Library, AP File.

[310] Ibid.

Mississippi College Board spokesperson Pam Meyer said the board is pleased. She said the board now will ask the Legislature to put more money aside for the *Fordice* case.[312]

Alvin Chambliss Jr., the lead attorney for the plaintiffs, said that the "case is not over. Nobody has said the system is desegregated." And Mississippi State Representative Jim Evans (D-Jackson), a member of the legislative Black Caucus, also said the court ruling does not end the case. "If he [the judge] had given us equity and fairness, we would not have appealed it," the lawmaker said. "It will continue. . . . I'm not going to knock the Supreme Court for sending it back because it ought to have been settled by now," Evans said, adding that the state could speed up the end of the case by working with plaintiffs.[313] Mr. Chambliss has petitioned the Supreme Court again to review all lower court decisions.[314] He has challenged the change in the admissions policies of the state schools and has proposed that the state spend approximately $300 million and set up professional programs such as a law school or nursing programs at the campuses.[315]

Mark Henry, chief legal adviser for Governor Kirk Fordice, said that the denial by the Supreme Court of the appeal of *Fordice* "means the end of the litigation is in sight. . . . That's good news for the taxpayers, that's good news for the students of Mississippi."[316]

Even before the Supreme Court issued its ruling, several individuals involved in the suit called for settlement: Dr. Clinton Bristow, president of historically black Alcorn State University, said, "It's time to call it quits" just after the April 1997 ruling of the appeals court. And U.S. Representative Bennie Thompson (D-MS), one of the plaintiffs, publicly called for some type of settlement in the case, saying, "I think it is time for all parties to sit down and see if we can put this case to rest." Finally, Howard University Law School professor Ken Tollett Sr. argued that it was time to settle because not much more could be achieved at the judicial level in the case. Professor Tollett said:

> [Lead attorney for the plaintiffs Alvin] Chambliss and I have disagreed about this for years. I think we're better off in the political process than in the judiciary. Look at Louisiana and Alabama. It was the leadership of the Black [legislative] caucuses in those states that provided good settlements and provided for the enhancement of Black institutions. Since Mississippi has such a large number of [black] legislators, they may be able to substantially help these students, if not constrained too much.[317]

This year marks the 25th anniversary of *Fordice*. Lilly Ayers, the 71-year-old widow of the original plaintiff, Jake Ayers Sr., said recently, "I felt like it would be a long time but not 25 years. I don't think my husband would have felt it would take 25 years, either. It was so simple."[318]

Hopwood or *Fordice*—Which Controls?

In *Hopwood v. Texas*,[319] the Fifth U.S. Circuit Court struck down an affirmative action admissions policy at the University of Texas Law School.[320] The decision has been interpreted by the state attorney general as prohibiting any use of race in higher education policy. In February 1997, Texas Attorney General Dan Morales formally declared that Texas public universities "would employ only race-neutral criteria in administering their internal policies, including admissions, financial aid, scholarships, fellowships, recruitment and retention."[321]

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[311] "Desegregation Case Nearer End in Mississippi as High Court Backs Off," *The Commercial Appeal*, Jan. 22, 1998, p. A13.

[312] Ibid.

[313] Ibid.

[314] Randal C. Archibold, "The Price of Desegregation," *The New York Times*, Apr. 9, 2000, p. 22.

[315] Ibid.

[316] Ibid.

[317] Roach and Fields, "Mississippi Churning," pp. 10–11.

[318] Archibold, "The Price of Desegregation."

[319] 861 F. Supp. 551 (W.D. Tex. 1994) (using separate admissions procedures for blacks and Mexican Americans violates the equal protection clause of the 14th Amendment, because it was not narrowly tailored to achieve compelling state interests since the process prevented any meaningful comparative evaluation among applicants of different races), *rev'd in part, remanded, appeal dismissed*, 78 F.3d 932 (5th Cir. 1996) (holding law school cannot use race as a factor in law school admissions despite the goal of creating greater diversity, affirmed, remanded for consideration whether plaintiffs would have been admitted in absence of procedures that took into account applicants' race or ethnicity, and if so, what damages are appropriate), *cert. denied*, 518 U.S. 1033 (1996), *vacated mem.*, 95 F.3d 53 (5th Cir. 1996), *on remand*, 999 F. Supp. 872 (W.D. Tex. 1998) (holding that none of the plaintiffs would have been admitted under admission system that took no account of race or ethnicity).

[320] The Texas case stems from a lawsuit filed in 1992 by Cheryl Hopwood and three other white law school applicants at the University of Texas. They asserted they were denied admission because affirmative action policies gave unfair preferences to less-qualified minority applicants. In March 1996, the three-judge panel ruled not only that the law school's admissions policies were illegal, but also called into

Alvin Chambliss Jr., lead attorney for the plaintiffs in the *Fordice* case, argued that his case "trumps *Hopwood*" and that, in fact, "*Hopwood* is dead,"[322] adding that unlike in *Hopwood*, the Fifth Circuit ruled in *Fordice* that diversity is important, that "race does matter."[323] Mr. Chambliss said, "The ultimate question for black public colleges is whether or not *Hopwood* will ultimately hurt the overall access movement. The issue for traditionally white institutions is, whether framed as diversity or affirmative action, do black students have access to higher education?"[324]

Others disagree with Mr. Chambliss. For example, Lynn Rodriguez, general counsel of the Texas Higher Education Coordination Board, said she did not believe the circumstances of the Mississippi case could be applied to the interpretation of *Hopwood*. "I think it's too far of a stretch," Rodriguez said. The respective decisions, she said, were narrowly tailored by the U.S. Fifth Circuit Court to address different state higher education systems.[325]

The *Hopwood* interpretation by Attorney General Morales has stirred a great deal of op-

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question the U.S. Supreme Court's ruling in Regents of University of California v. Bakke, 438 U.S. 265 (1978), a reverse discrimination case. The *Bakke* decision said schools could not adopt racial quotas but race could be used as one of several factors in admissions. The Fifth Circuit ruling in *Hopwood*, on the other hand, said the law school "may not use race as a factor" in admissions, "even for the wholesome purpose of correcting perceived racial imbalance in the student body." But the decisive language of the ruling has not been affirmed elsewhere. Instead, the Supreme Court let the ruling stand, leaving it in effect only in the Fifth Circuit. Even the two other states covered by the Fifth Circuit—Louisiana and Mississippi—are under court orders to further desegregate their colleges and universities and have not adopted the strict interpretation of *Hopwood* being used in Texas. Peter Applebome, "Texas Is Told to Keep Affirmative Action In Universities or Risk Losing Federal Aid," *The New York Times*, Mar. 26, 1997, p. A11. *See also* Hopwood v. Texas, 78 F.3d 932, 962 (5th Cir. 1996).

[321] Peter Applebome, "In Shift, U.S. Tells Texas It Can't Ignore Court Ruling Barring Bias in College Admissions," *The New York Times*, Apr. 15, 1997, p. A20. There have been mixed signals, both at the national and state levels, which reflect the uncertainty about the future of affirmative action. The month following the declaration by the Texas attorney general that Texas public universities would employ race-neutral criteria in administering their internal policies, Norma Cantú, head of the Office for Civil Rights at the U.S. Department of Education, issued a letter warning Texas state officials that they were required to maintain their affirmative action programs or risk losing federal higher education money. In a Mar. 18, 1997 letter, the Office for Civil Rights told Texas officials that they must aggressively take steps like affirmative action to attract minorities or risk losing $500 million in student scholarships, work-study programs, and research grants. Directly contradicting the Texas attorney general's directive, Ms. Cantú argued that, under the *Fordice* ruling, Texas is required to continue to root out current discriminatory practices and the vestiges of past discrimination and make its campuses more accessible to minorities. Not only can race be used as a factor in admissions, said Cantú, but universities also "have a clear legal obligation to do so to remedy current discrimination or the effects of past discrimination." Ibid.

But then the acting solicitor general of the United States, Walter Dellinger, wrote an unusual retort to the Education Department, saying that the *Hopwood* case banning affirmative action was the law in Texas. Some experts suggest that such mixed signals make it increasingly important for the Supreme Court to clarify its views on when—and in what forms—affirmative action is permissible. Ms. Cantú, insisting that she never advised Texas officials that Texas must maintain affirmative action programs or risk losing federal financial support for higher education, sent a subsequent letter (Apr. 11, 1997) to Texas State Senator Rodney Ellis to "ensure that recent mischaracterizations of my [Mar. 18, 1997] letter do not lead to a misunderstanding. . . ." Michale Sharlot, dean of the University of Texas Law School, said, "It's enormously important, not just in the selfish view of Texas, which is just being transformed by following the *Hopwood* decision, but in terms of how important the question is for the whole country." Ibid.

[322] Roach and Fields, "Mississippi Churning," p. 11. Chambliss makes the following comparison between the *Hopwood* and *Fordice* (which Chambliss refers to by its original name, *Ayers*) cases: "*Hopwood* cut off historical evidence. *Ayers* expanded the concept of traceability. *Hopwood* held that race cannot be used to remedy imbalances. *Ayers* said that it could be used in just about every context. *Hopwood* threatened punitive damages. *Ayers* excluded their use. Finally, *Ayers* is predicated on a U.S. Supreme Court case, where *Hopwood v. Texas* is based on no single Supreme Court case. *Hopwood* is effectively overruled in the Fifth Circuit because the last decision governs. This is not to say that a district court cannot go with *Hopwood* as precedent. Until the U.S. Supreme Court or the Fifth Circuit en banc resolves the conflict, courts have a choice. *Ayers* is predicated on a U.S. Supreme Court decision that applies nationally. This gives it much more weight." Ibid., p. 32.

[323] Ibid., p. 32.

[324] Alvin O. Chambliss Jr., "Hopwood and Ayers v. Fordice: The Beginning of the End?" *Black Issues in Higher Education*, May 15, 1997, p. 32.

[325] Ronald Roach, "Hopwood or Fordice: Which Controls in the Fifth Circuit?" *Black Issues in Higher Education*, May 15, 1997, p. 14, n. 6.

position among numerous officials and legislators in Texas. The legislators have argued that Texas is obligated to use race-based affirmative action to remedy prior discrimination in higher education, and they argued that both the *Fordice* decision and the 1978 U.S. Supreme Court decision *Regents of the University of California v. Bakke*[326] permits such remedies. "What's needed is some authoritative statement by the Supreme Court of where *Bakke* stands," said Samuel Issacharoff, a University of Texas law professor and a lawyer for the university in the *Hopwood* case. "One of the ironies of the situation is that until *Hopwood* came along *Bakke* stood in a vacuum. *Bakke* came in 1978 and there's been no interpretive case law since then. . . . I can't think of another area of law where there's been one major Supreme Court decision that's stood by itself for 25 years and then a lower court comes along and says it's to be disregarded."[327]

In March 1997, the Department of Education's Office for Civil Rights informed Texas state officials that it would open a review "to determine whether any vestiges of prior discrimination are causing discrimination to continue" in Texas. According to Norma Cantú, assistant secretary in the Office for Civil Rights at the Department of Education, the "review is being conducted under the standards set out by the Supreme Court in 1992 in the *Fordice* case regarding the obligation of formerly segregated systems of higher education to eliminate vestiges of those old systems."[328]

Community Colleges

The state of Mississippi is divided into 15 community college districts, each of which has a community college in it.[329] The state community college system—which currently has a budget of $250 million—evolved from the old system of agricultural high schools, which were boarding schools. In the 1920s the State Legislature authorized two additional years of post-high school work. The mission, as stated by the Legislature, is to offer programs that enhance and improve the quality of life for Mississippi citizens. This has been translated into offering academic programs that can be transferred toward earning a baccalaureate degree at a four-year university. The community colleges are also used to train people in professional areas and technical/vocational areas, which has become an increasingly important part of the mission. Dr. Martha Cheney, project coordinator at the Public Education Forum in Jackson, Mississippi, testified, "Right now we are doing more responding to industry with our community college system, on-the-job training, our community colleges are focusing much more on adults and technology, retooling people. . . ."[330]

Dr. Olon E. Ray, executive director of the Mississippi State Board for Community and Junior Colleges, described the mission of the community colleges—all of which have dormitories and extracurricular activities—as "comprehensive" in nature, meaning that the programs span the entire spectrum, including full-time academic, part-time academic, allied health-related (e.g., dental assistant, medical assistant, and pharmacist technician), vocational, technical, and work force training and retooling. Among the 91,000 students overall, the biggest growth area is in the noncredit, work force-related "transition programs"—or programs that give students skills necessary to gain (or advance in) employment, but that do not necessarily lead to a degree.[331]

Dr. Ray reported that in 1994, the State Legislature passed the "Workforce and Education Act." This act created "one-stop" career centers in each of the state's community colleges. The centers were designed to help area employers and employees who had training needs, placement needs, assessment needs, and all other needs which contribute to a person's employability.[332]

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[326] 438 U.S. 265 (1978).

[327] Applebome, "Texas Is Told to Keep Affirmative Action In Universities or Risk Losing Federal Aid," p. 11.

[328] Ibid.

[329] As for the 15 community colleges located throughout the state, they were "put on the sideline" of the litigation almost from the beginning. However, the original *Fordice* ruling directed that there be a study of the admissions requirements of the community college system in order to ensure open admissions and accessibility for interested students. Dr. Olon E. Ray, executive director, Mississippi State Board for Community and Junior Colleges, telephone interview, May 29, 1997 (hereafter cited as Ray Interview).

[330] Cheney Testimony, Hearing Transcript, p. 1182. The Public Education Forum is funded by businesses throughout Mississippi to provide business involvement in education policy and legislation. Ibid.

[331] Ray Interview.

[332] Ibid.

According to Dr. Ray, the "traditionalists" in community college education will say that its primary mission is for "academic bridging," or serving as a passageway between the two-year community colleges and the four-year universities.[333] Students first enroll in a community college where they take remedial,[334] college prep, and lower level college courses. The students then transfer to the four-year universities and work toward the baccalaureate degree.[335] Students who complete 24 hours of classes in the community colleges are permitted to transfer into any one of the state's eight public universities.[336]

Dr. Ray said that while the community colleges are still strongly committed to "academic bridging," only about 4,000 of the 91,000 students—or less than 5 percent of the total student population—transfer to four-year universities each year.[337] Instead, the focus has been turning toward the "transition programs," which Dr. Ray believes is a positive change:

> You have to understand that I am a 56-year-old native Mississippian who has seen generation after generation of people not involved in higher education—not involved in successful completion of a secondary education. Those are not disposable people. . . . And in many cases it's not practical for a working person to go back and get a baccalaureate degree. They don't need one. But they do need skills to work. We're talking about quality of life by increasing per capita income, by increasing employability, and all those kinds of things. And we are the right ones to do that. I think it's a major economic/human initiative.[338]

The 1990 census in Mississippi showed that there were 547,000 people without a high school education. Given the projection that 80 percent of all new jobs will require education *beyond* the high school level, community colleges in Mississippi will continue to play a useful role in imparting needed knowledge and skills to people seeking those jobs.

According to Dr. Ray, community colleges help increase access to and desegregation within the state system of higher education because they are more accessible, more affordable,[339] and more "culturally . . . friendly in helping nontraditional[340] students to access the first two years of a baccalaureate degree."[341]

As for creating a multiracial environment on the campuses, Dr. Ray said that while they "worry about the racial mix," they do not have a "super aggressive campaign to single out any group of people" in their recruiting efforts. He reported that while there is a "pretty good integration" of activities within the community colleges, he also believes there is some racial and ethnic tension. However, Dr. Ray suggested that less tension exists on the community college campuses than in many other institutions "by virtue of why we are, and who we are, and how we do business." Moreover, Dr. Ray argued that racial tension is driven by issues of race and economics, saying, "If we do not raise per capita income in this state broadly for most of the people, we are going to continue to fight. . . "[342]

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[333] Ibid.

[334] Dr. Thomas Layzell, Mississippi commissioner of higher education, believes that the state's community colleges are "the major provider of developmental or remedial education in the higher education system." Layzell Testimony, Hearing Transcript, p. 225.

[335] While he did not present exact figures, Dr. Sutton argued that the transfer rate among minorities is lower than the transfer rate for nonminorities. He said that a contributing factor to such an outcome is that minority students are disproportionately represented in nonacademic tracks within the community college system. At one point, Dr. Sutton quipped that "the transfer rate is very high for the very good athletes." Sutton Testimony, Hearing Transcript, p. 243.

[336] Layzell Testimony, Hearing Transcript, p. 225.

[337] Ray Interview. While the transfer rate from the community colleges to the universities is low, those students who make the transition appear to perform nearly as well academically as students who enroll directly from high school into one of the eight universities. Data have been collected by Dr. Ray that compare "community college transfer seniors" with "native seniors" at Delta State University, Mississippi State University, University of Mississippi, and the University of Southern Mississippi. Data are on file at the U.S. Commission on Civil Rights, Washington, DC.

[338] Ray Interview.

[339] In Mississippi, the per-year tuition cost at a community college is approximately one-half the per-year tuition cost at a four-year university.

[340] "Nontraditional" refers to older students and students, both white and black, "whose families and whose cultural values typically do not send them to college." Ray Interview.

[341] Dr. Ray emphasized how accepting and supportive the community college environment can be. He pointed out that his own parents had dropped out of school—his father after the third grade—and that community colleges provided his family and other "disenfranchised" people with a nonthreatening introduction to higher education. Dr. Ray said his family found community colleges to be "more accepting and supporting. . . . It's not just accepting; it's what they do for students once they get there. People who need to feel OK, who need to feel the level of advice and support from people rather than a more impersonal environment on a larger, more complex campus. . . . What we do well is we invite people to come and to succeed." Ibid.

Race Relations and Desegregation

Dr. Ann Homer Cook, a consultant in the area of education who recently completed writing her doctoral dissertation on the *U.S. v. Fordice* case, said there are contingents of both whites and African Americans who do not want to see meaningful integration at certain institutions because of what has occurred in the past. She reported that there are people who work at the University of Mississippi and at Jackson State University who remember turbulent events of the 1960s, including the controversy surrounding James Meredith as the first African American at the University of Mississippi, as well as the controversy surrounding the police coming onto the Jackson State University campus, which resulted in student deaths. Dr. Cook believes there are people at both historically white and historically black schools who strongly oppose meaningful integration.[343]

Dr. Cook also suggested that there is a strong feeling among African Americans that their community is bearing the bulk of the burden of desegregation. Said Dr. Cook, "Many African Americans are now asking themselves, 'Why should we have to give up—through closings or mergers or whatever—the black schools that we relied upon for education during the time we were excluded by law and by practice from the traditionally white institutions?"[344] And Dr. William Sutton, president of historically black Mississippi Valley State University, agrees, arguing that while African Americans did not create the system of segregation, now the burden of dismantling segregation has been unjustly shifted upon them.[345]

Dr. F. Kent Wyatt, president of Delta State University, a historically white institution, said that over 25 percent of the school's students are African American, and that the graduation rate for minority students is equal to that of nonminority students. He said there is "complete integration" of extracurricular activities, "from homecoming queen to student body president."[346]

Dr. Wyatt does not believe that inequities in funding have existed between the historically black and the historically white institutions. He argued that the distinction must be made between schools that are "regional" schools (including Jackson State, Mississippi Valley State, Alcorn State, and Delta State universities) and the "land grant" schools (including the University of Mississippi and Mississippi State University). Dr. Wyatt said the "regional" schools have all been funded exactly alike, whether they are historically black or historically white. He said the "land grant" schools are better funded not because they are historically white institutions, but, rather, because their missions are much wider in scope, including research, outreach to nearby communities, etc. Dr. Wyatt argued that the state cannot afford four "land grant" institutions. He said the University of Southern Mississippi and Jackson State are both moving toward becoming such schools, and this is acceptable only if the state has the funds to pay for it. For now, said Dr. Wyatt, Mississippi can afford four such schools only because the gaming industry is generating so much tax revenue for the state.[347]

Dr. Ray argued that most people believe the *Fordice* decision to be "moderate" because it did not create the degree of change that many people expected. He said:

> They might have expected some bolts of lightning and reconfiguration. The thing that has been talked about most is which colleges and universities are going to be closed, and which ones are going to survive. . . . I think when that didn't happen, the decision lacked a kind of excitement and drama about it. . . . But the policymakers, by and large, see it as an . . . opportunity for improvement.[348]

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[342] Ibid.

[343] Ann Homer Cook, education consultant, telephone interview, July 18, 1996. However, Dr. William W. Sutton, president of Mississippi Valley State University, argued that the "fact that black colleges are predominantly black has nothing to do with black people making that decision . . . they never segregated and discriminated . . . the *de jure* system provided that. . . ." Sutton Interview.

[344] Sutton Interview.

[345] Ibid.

[346] Wyatt Interview.

[347] Ibid. Roger Malkin, chairman and CEO, Delta and Pine Land Co., argues the gaming industry, while generating significant state revenue, has had a negative impact on Mississippi's low-income citizens. "For every new casino built, there's a new pawn shop that goes up across the street," he said. Malkin Interview.

[348] Ray Interview.

Dr. Ray also suggested that while the impact of *Fordice* will be "very positive," it will not be "revolutionary." Said Dr. Ray: "I have been involved in school work since the 1960s, and as a rural Mississippian reared in that element, I think that a lot of these things would not have happened without the court's interdiction. . . . I think it's another installment, another increment in paying our dues for bringing about change."[349]

Robert Kronley, the primary author of *Transformation Through Collaboration: Desegregating Higher Education in the Mississippi Delta*, argues that higher education in Mississippi has been "entirely reactive, and it's been reactive to judicial mandates, and that's not good enough." He added, "Litigation can only go so far, and I think it's really at a point where we're beyond litigation and it really depends on a lot more than that."[350] "What it's going to take is a lot more than just reading the decision and thinking narrowly that we've complied with it. . . . [O]ne of the worst things that can happen is you'll have full compliance with the decree and nothing else, so the notion will be oh, this is passed, it's gone away, we're done, we don't have to do any more, and we go back to where we were before. That's unacceptable. . . ."[351]

And yet, Mr. Kronley also suggests a reason why more might *not* be done beyond what is court-ordered: "I think people have essentially [been] afraid to take risks, because the potential benefits that they see have not really been profound. I mean, in order to take a risk you've exposed yourself to being in the spotlight and taking a lot of heat from other people in the community, and I think that's—you know, there's a history in the state, people being at a minimum driven away if we do that. . . ."[352]

Robert Kronley testified that it will take "generations" before people stop "think[ing] of X or Y as a black college or a white college." He suggested that it no longer matters if a school is looked upon as historically black or historically white—indeed, he suggested that it is irrelevant what percentage of the student body is black or white[353]—provided the institution offers high-quality programs and reaches out to students of all races.[354] He believes that "to the extent that a racial identification is either . . . a badge of inferiority, or . . . serves to restrict choice on the basis of race," then "we need to do everything we can do [to correct it]."[355] Mr. Kronley suggested that white students will attend historically black colleges and universities only if the academic programs being offered are of a very high quality.[356] As he put it, "high-quality programs attract whites."[357]

Currently, of the eight public universities in Mississippi, three are predominantly black and five are predominantly white.[358] Dr. Ray, executive director of the State Community College Board, believes this will remain the situation for the foreseeable future for two reasons: first, because of demographics; second, because many people simply do not want change to come about.[359]

First, as for demographics, Dr. Ray argued that the numbers of white students who are taking college preparatory courses and planning to attend college are "feeding the pipeline, and it's going to stay that way for a while."[360]

And second, as for people being averse to change, Dr. Ray said:

> There is that element always . . . We still have that mentality in some of our people . . . They're not all white and they're not all black . . . It represents a kind of thinking . . . It has to do with power and control in many ways . . . Some of it has to do with anxiety and fear and distrust, where people don't trust themselves in other people's hands, and if they lose control—more specifically, if black people do not have black universities, they will not control universities that are majority white. They see that as kind of a

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[349] Ibid.

[350] Kronley Testimony, Hearing Transcript, p. 291.

[351] Ibid., p. 292.

[352] Ibid., p. 301.

[353] Kronley testified that "whether [the school is] 82 percent black or 64 percent black or 92 percent white. Just that doesn't matter. The question is choice." Ibid., p. 312.

[354] Ibid., pp. 310–12.

[355] Ibid., p. 312.

[356] Ibid., p. 308.

[357] Ibid., p. 311.

[358] Historically black institutions include Jackson State University, Mississippi Valley State University, and Alcorn State University. Historically white institutions include the University of Mississippi, Mississippi State University, Mississippi University for Women, University of Southern Mississippi, and Delta State University.

[359] Ray Interview.

[360] Ibid.

> bastion, and I see part of their argument about that. What I'm afraid they give up in too many cases is the quality of service that they provide and diversity that they need within their own universities, too, just like white folks need diversity in theirs.[361]

Dr. Leroy Morganti, vice president for university advancement at historically white Delta State University, reported during the Mississippi Delta hearing that the *Fordice* case did not affect racial and ethic tensions on the campus of Delta State University. Rather, said Dr. Morganti, the case inspired a sense of "uneasiness" on campus because of the possible merger that was going to take place between Delta State and Mississippi Valley State universities. He said that "no one knew what was going to emerge [after such a merger]. It was an institution that we would have to gain public acceptance for, because it wouldn't be them and it wouldn't be us."[362]

Dr. James D. Anderson, professor of education at the University of Illinois, suggested that many of the plans being put into effect as a result of the *Fordice* decision—including the raised admissions standards that have decreased the number of people of color entering Mississippi universities—are a sort of "backlash or punishment" for filing the suit in the first place.[363] Dr. Anderson believes that, eventually, it will be the historically black institutions that are most heavily—and negatively—affected by the *Fordice* case.[364] Specifically, Dr. Anderson believes that while there are no plans to do this in the immediate future, Mississippi Valley State will eventually be closed and Alcorn State will be placed under the auspices of Mississippi State University. While he believes Jackson State will remain open as an "urban university," such mergers or closings would mean the elimination of two of the state's top three degree-awarding schools for African Americans in Mississippi.[365]

Finally, Dr. Anderson said that he had hoped that the *Fordice* lawsuit would be remedied by a long-range plan. Instead, he argued that a "quick-fix" has been put into place—that the court utilized "damage control" provisions rather than instituting fundamental changes to the system. Dr. Anderson believes there's a strong feeling by the court that it's time to "move on." He said that the most serious flaw of the court's ruling is that it keeps the state college system "separate and divided" because none of the schools are interdependent: there is no self-interest in the historically white schools or historically black schools in working together. Indeed, Dr. Anderson believes there is a strong undercurrent of "mistrust and hostility" pervading both historically white and black schools which is directed toward each other.[366]

Robert Davis, professor of law at the University of Mississippi, said there are many "positive things" occurring with race relations in Mississippi. He said there is a "lot of baggage" in the area of race, that the "races understand each other well," and that this understanding frequently leads to open and good debate and exchange. However, Professor Davis argued that there is still a "dual society" in Mississippi, which is largely "by choice" on the part of both whites and African Americans. He stated:

> When it comes to interacting socially, the atmosphere in Mississippi is different from other parts of the country. The different races are not comfortable with each other—separation seems to be promoted in different ways, including in professional groups, in social groups, in churches, etc. You basically have two societies that go about their lives and only get together when they have to. People don't seem to want bridges built.[367]

Of course, there was also testimony at the Mississippi Delta hearing to suggest that important social interaction is starting to take place among the different races. Dr. William Sutton, president of historically black Mississippi Valley State University, said he "can see some changes . . . in the communities and the rota clubs and on bank boards and also in the cha bers of commerce that we are beginning to pa ticipate a bit more, and that will help, but v have a long ways to go."[368]

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[361] Ibid.

[362] Leroy E. Morganti Testimony, Hearing Transcript, p. 251.

[363] Anderson Interview.

[364] The *Fordice* decision also brought to the surface a long-standing paradox of the desegregation movement in higher education: the possibility that historically black colleges and universities—the very institutions that provided opportunities for blacks during times of segregation—might be sacrificed in the name of desegregation. In this context, the parallel with public schools is instructive. In elementary and secondary education, federal courts have long emphasized that the burden of remedying segregation should not be placed disproportionately on the minority students who are its victims. *See* Southern Education Foundation, *Redeeming the American Promise*, p. 14.

[365] Anderson Interview.

[366] Ibid.

[367] Davis Interview.

Dr. Anderson, professor of education at t University of Illinois, was an expert witness the *U.S. v. Fordice* case. He visited most of Mi sissippi's universities and said there was "undercurrent" of hostility throughout the sta with "very little good will" on either side of t *Fordice* debate.[369] Dr. Anderson believes th African American students who attend histor cally white schools feel alienated and unwelcon on campus.[370] Dr. Morganti, vice president f university advancement at historically whi Delta State University, reported that the "co nerstone" of the school's "efforts to remove me sages of segregation" on the campus is to provi a campus and classroom environment "whe students of all races feel welcome and comfor able."[371]

Dr. Sutton pointed out that whatever raci and ethnic tension exists on the higher educ tion campuses must be considered in the conte of a long history of race relations, and in the co text of primary, secondary, and higher educ tion. Dr. Sutton said:

> Actually the tension, if there is tension, is not s much related to the campus. It's a historical typ thing. When desegregation came to the Delta, a larg number of academies were created for white studen and that is still going very strong here. So we have t overcome a great deal in order to make people feel comfortable coming to school in a desegregated higher education system, when the elementary and secondary education is still highly segregated, because of the private academies . . . [I]t's very difficult to make them change immediately on finishing 12th grade to come to an historically black college.[372]

Robert Davis, law professor at the University of Mississippi, was asked during the Mississippi Delta hearing, "Do you think that racial and ethnic tensions exist under the current university system?" He replied, "Yes, I think they are exacerbated under the current university system. . . . I think the choices that are available and the history upon which those choices are made certainly exacerbate racial tensions."[373]

Later, Professor Davis was asked if racial and ethnic tensions had been exacerbated as a result of the current operating standards for the system. Professor Davis answered by describing racial incidents—"all very recent"—which have taken place at the University of Mississippi, including an African American fraternity being burned shortly before opening; students being taken away from campus, stripped, and having certain obscenities written on them; and obscenities written in the law school bathroom facilities. He then concluded, "So there is—I guess my response is that this systemic structure does help to exacerbate the tensions in my view."[374]

And while Professor Davis said there were "absolutely" no administrative policies at the state universities that were "responsible" for the racial tensions on the campuses, he stated:

> The argument that we've heard before is that students are able to make free choices here. Well . . . that's true in a way, but when your choices have historical basis and that structure continues to exist, the system is exacerbating the problem, not the policies that currently exist in 1997, but a structure that was established when each one of these institutions was created and each one of the institutions that were chartered have in their charters very, very clearly direct [mandates] whether or not they're supposed to, educate white women or Negroes, to become teachers or what have you, and that is the structure. . . . I am disappointed with the conclusion by Judge Biggers that changing that structure is not constitutionally

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[368] Sutton Testimony, Hearing Transcript, p. 250.

[369] Dr. Clinton Bristow Jr., president of Alcorn State Un versity, concurred with this view. He said that race relatio statewide are tenuous. Dr. Bristow also stated the recen appointment by Governor Fordice of four white males to fi vacancies on the Mississippi College Board has created situation that is racially contentious and adversarial. Dr Bristow argues that the board needs to be representative the entire college population in the state—black and white Dr. Clinton Bristow Jr., president, Alcorn State Universit telephone interview, July 24, 1996.

[370] Anderson Interview. Associate Professor Robert N. Davi testified that African Americans often attend historicall black colleges and universities because such schools ar "perceived to be a more supportive environment. . . ." H also commended administrators of the University of Missis sippi for their willingness to review certain university sym bols—"like the rebel, like Dixie being played"—that som members of the university community find offensive. Davi Testimony, Hearing Transcript, pp. 285–86.

[371] Morganti Testimony, Hearing Transcript, p. 216.

[372] Sutton Testimony, Hearing Transcript, pp. 249–50.

[373] Davis Testimony, Hearing Transcript, p. 285.

[374] Ibid., pp. 287–88.

> mandated . . . until that system is adjusted, these problems will continue.[375]

Robert Kronley, the primary author of *Transformation Through Collaboration: Desegregating Higher Education in the Mississippi Delta*, picks up on this theme by arguing that, while blatant policies are not working to discriminate, something lingers from the past which appears to influence individual and institutional behavior. "[T]here are no longer *policies* in this state which essentially work against people on the basis of race. There are, however, *practices*. Some of them have been ingrained and have not really changed very much. . . ," he said.[376]

In the realm of the Mississippi public university system, a similar sentiment is expressed by Dr. Roy Hudson, vice president for administration at Mississippi Valley State University and a principal in the *Fordice* case since it began in 1974. He said that Mississippi's public higher education system "will never be without its racial duality."[377]

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[375] Ibid., pp. 288–89. Professor Davis, when asked near the conclusion of his testimony whether Mississippi was on the right path to providing equality of opportunity at its colleges and universities, responded, "A resounding no, absolutely." Ibid., p. 289.

[376] Kronley Testimony, Hearing Transcript, p. 303 (emphasis added).

[377] Roach and Fields, "Mississippi Churning," p. 14.

CHAPTER 3

Voting Rights and Political Representation in the Mississippi Delta

VOTING RIGHTS LEGISLATION AND LITIGATION

Reconstruction

Following the end of the Civil War, two constitutional provisions were ratified to protect the right of African Americans to vote.[1] The 14th Amendment to the Constitution, which in part guaranteed equal protection of the laws, was ratified in 1868 and the 15th Amendment was ratified in 1870. The 15th Amendment provided:

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
2. The Congress shall have power to enforce this article by appropriate legislation.[2]

During Reconstruction, several statutes also were passed in an attempt to safeguard the franchise rights of the newly freed slaves. The Military Reconstruction Acts of 1867 mandated that the southern states, as a condition of readmission to the Union, adopt new constitutions providing suffrage rights for African American males.[3] As a result, approximately 700,000 blacks, mostly former slaves, registered to vote.[4] Similarly, following ratification of the 15th Amendment, Congress passed "an Act to enforce the Rights of Citizens of the United States to vote in the several States of this Union, and for other Purposes,"[5] commonly known as the Enforcement Act of 1870. This act mandated that any citizen, otherwise qualified to vote, shall be entitled to vote without distinction to race, color, or previous condition of servitude.[6] The act also provided penalties for obstruction of the right to vote by election officials or other citizens.[7] In 1871, the act was amended to strengthen the penalties for fraudulent registration or failure or refusal to register entitled persons. The act also established election supervisors for cities or towns with more than 20,000 inhabitants.[8]

For a brief time, these protections afforded African Americans the ability to vote and elect representatives of their choice. The state of Mississippi for example, from 1869 to 1901, elected a total of three black U.S. congressmen and 64 black state legislators.[9] The electoral success of African Americans was short-lived, however. In two cases decided in 1875, the Supreme Court severely restricted use of the Enforcement Act,[10] and in 1894 Congress repealed many of the remaining sections. The only provisions of the act that survived were two sections creating civil liability on the part of persons who interfered with the right to vote (now 42 U.S.C. §§ 1983, 1985) and two sections imposing criminal sanctions for hindering a citizen in the exercise of the right to vote (now 18 U.S.C. §§ 241, 242).

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[1] More specifically, the constitutional provisions addressed the right of African American men to vote. Women were not guaranteed the right to vote until ratification of the 19th Amendment to the Constitution in 1920.

[2] U.S. CONST. amend. XV.

[3] Chandler Davidson, "The Recent Evolution of Voting Rights Laws Affecting Racial and Language Minorities," in *Quiet Revolution in the South*, eds. Chandler Davidson and Bernard Grofman (Princeton, NJ: Princeton University Press, 1994), p. 21.

[4] Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944–1969* (New York: Columbia University Press, 1976), p. 2.

[5] Enforcement Act of 1870, 16 Stat. 140 (1870).

[6] *Id.*

[7] Enforcement Act of 1870, 16 Stat. 142 (1870).

[8] Amendment to the Enforcement Act of 1870, 16 Stat. 433 (1871).

[9] Jessie Carney Smith and Carroll Peterson Horton, eds., *Historical Statistics of Black America: Volume II* (Gale Research, Inc., 1995), p. 1289.

[10] United States v. Reese, 92 U.S. 214 (1875); United States v. Cruikshank, 92 U.S. 542 (1875).

Litigation Prior to 1965

Congress did not address the issue of voting rights again until passage of the Civil Rights Act of 1957.[11] Prior to that legislation or enactment of the Voting Rights Act, litigation to protect the rights of people of color to vote was brought under the Constitution, specifically the 15th Amendment and the equal protection clause of the 14th Amendment. The first of these cases challenged impediments to voting that states erected to prevent the exercise of franchise rights by African Americans.

Guinn v. United States, 238 U.S. 347 (1915): The Court in this case considered the constitutionality of an amendment to the Oklahoma Constitution, which established a literacy test as a condition for registering to vote or for voting, but exempted from the requirement people who had been entitled to vote before January 1, 1866, or their lineal descendants (known generally as a grandfather clause). The Court found that there could be no reason for the grandfather clause other than to create a standard of voting that revitalized conditions existing prior to the adoption of the 15th Amendment. Thus, it was void under the 15th Amendment to the Constitution. The Court also held that the literacy test itself was so connected to the grandfather clause that the unconstitutionality of the latter rendered the entire amendment invalid.

Nixon v. Herndon, 273 U.S. 536 (1927): The Supreme Court in this case held unconstitutional under the 14th Amendment a Texas statute that barred blacks from voting in Democratic Party primary elections. Although the statute was challenged under both the 14th and 15th Amendments, the Court did not consider the 15th Amendment claim because it found it "hard to imagine a more direct and obvious infringement of the Fourteenth [Amendment]."

Grovey v. Townsend, 295 U.S. 45 (1935), overruled by *Smith v. Allwright, Election Judge*, 321 U.S. 649 (1944): In this case, the Court upheld a resolution adopted by the Texas Democratic Party at its state convention that restricted membership in the party and participation in its deliberations to white citizens of Texas. Based on this resolution, the black plaintiff was denied a ballot in the primary election. The Supreme Court held that action by the party's state convention was not state action under the 14th or 15th Amendments, and denial of the right to vote in a primary, versus a general election, was merely refusal of party membership and did not violate the Constitution.

Breedlove v. Suttles, Tax Collector, 302 U.S. 277 (1937), overruled by *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966): This case considered the constitutionality of a Georgia poll tax of $1, which applied to all inhabitants of the state between the ages of 21 and 60, but not to blind persons or to women who did not register to vote. Payment of the tax was required in order to register and vote in any election. A white male challenged the statute as unconstitutional under the equal protection and privileges and immunities clauses of the 14th Amendment and the 19th Amendment. The Court upheld the poll tax and found it violated neither the 14th nor the 19th Amendments.

Smith v. Allwright, Election Judge, 321 U.S. 649 (1944): The Court in this case overruled its previous decision in *Grovey v. Townsend*, and held the right to vote in primary elections was protected by the Constitution. This case again concerned the Texas Democratic Party's resolution that restricted membership to white citizens of Texas. The Court found that primary elections were conducted by the party under state statutory authority and were a part of the machinery for choosing officials. Although recognizing that generally membership in a party was not a concern of the state, the Court held that when membership was a qualification for voting in a primary to select nominees for the general election, it became an action of the state, and in this case violated the 15th Amendment.

Terry v. Adams, 345 U.S. 461 (1953): This case also concerned the voting procedures of the Democratic Party in Texas. The Jaybird Association, a county political organization, excluded blacks from its membership and from its primaries. The Jaybirds held elections each year to select candidates for county offices to run for nomination in the official Democratic primary, but these elections did not use any state machinery or funds. For the previous 60 years, the Jaybird candidate entered the Democratic primary without opposition and eventually won the general election. The Court thus held that the combined election machinery of the Jaybird Association and the Democratic Party deprived petitioners the right to vote because of their race, in violation of the 15th Amendment.

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[11] Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634.

Anderson v. Martin, 375 U.S. 399 (1964): In this case, the Supreme Court held that a Louisiana statute requiring that nomination papers and ballots in all primaries and elections designate the race of the candidate violated the equal protection clause of the 14th Amendment.

Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966): The Court in this case considered a challenge to the constitutionality of Virginia's poll tax. The Court held that a state violates the equal protection clause of the 14th Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. The Court thus expressly overruled *Breedlove v. Suttles, Tax Collector*.

Prior to the passage of the Voting Rights Act, constitutional claims also were raised to challenge the size and shape of voting districts. At first, the courts declined to become involved in an area viewed either as part of the political domain or under the exclusive control of the states, but later they began to adjudicate these cases.

Colegrove v. Green, 328 U.S. 549 (1946): This case involved an action brought by citizens of Illinois alleging that because of substantial changes in population, congressional districts in the state lacked compactness of territory and equality of population. The Court affirmed the decision of the district court dismissing the complaint, holding that Congress had exclusive authority to secure fair representation by the states in the House of Representatives and the "[c]ourts ought not to enter this political thicket."[12]

Gomillion v. Lightfoot, 364 U.S. 339 (1960): Black residents of Alabama brought an action under the 14th and 15th Amendments of the Constitution challenging a legislative action that changed the boundaries of the city of Tuskegee from a square to an irregular 28-sided figure. This change resulted in removing from the city's boundaries all but four or five of its 400 black voters. The district court had dismissed the action on the grounds that it had no authority to change the boundaries of a municipal corporation established by a state's legislative body. The Supreme Court reversed, holding that although the exercise of a state power wholly within the domain of state interest is insulated from federal judicial review, that insulation "is not carried over when state power is used as an instrument for circumventing a federally protected right."[13]

Baker v. Carr, 369 U.S. 186 (1962): In this case, citizens of Tennessee brought an action claiming they had suffered a debasement of their votes, in violation of the equal protection clause of the 14th Amendment. These allegations were based on the state's continued application of a 1901 reapportionment act, and its failure to account for the fact that the population of Tennessee had grown substantially and been redistributed. The district court, relying primarily on *Colegrove v. Green*, had dismissed the claim based on lack of subject-matter jurisdiction and failure to state a claim upon which relief could be granted. The Supreme Court reversed, rejecting the notion that this was a nonjusticiable political question, and held that the allegation of a denial of equal protection presented a justiciable constitutional cause of action.

Reynolds v. Sims, 377 U.S. 533 (1964): In this case, the plaintiffs claimed that the apportionment of the Alabama Legislature deprived them of their rights under the equal protection clause of the 14th Amendment. The 1900 census continued to form the basis of the Alabama legislative apportionment at that time, despite the fact that populations in some counties had grown substantially more than in others. The Court held the equal protection clause requires the seats in both houses of the State Legislature be apportioned on a population basis. The Court recognized the right to vote can be infringed by dilution of voting power in addition to an absolute prohibition on voting, and held any dilution of a person's right to vote in comparison with someone living in another part of the state violates the equal protection clause. This case is commonly referred to as the "one person, one vote" case.

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[12] Colegrove v. Green, 328 U.S. 549, 555 (1946).

[13] Gomillion v. Lightfoot, 364 U.S. 339, 347 (1960).

The Voting Rights Act

Litigation proved to be a useful weapon in the battle to destroy discriminatory voting procedures and practices. It was a weapon that could only be used in limited circumstances, however, because it required a substantial commitment of time and money. Ultimately, litigation alone could not effect the significant changes needed to secure the right to vote for eligible African Americans. Black voter registration, particularly in the South, was very low, and in Mississippi only 6.7 percent of eligible blacks were registered to vote in 1964.[14] In response, Congress began to pass important new civil rights legislation, all of which contained some provisions addressing voting rights.

Congress first passed the Civil Rights Act of 1957,[15] which, among other things, authorized the Attorney General to institute civil actions for injunctive relief on behalf of individuals deprived of the right to vote in federal elections and provided penalties for interference with federal voting rights.[16] The 1957 act also created the Commission on Civil Rights to investigate deprivations of the right to vote.[17]

Three years later Congress passed the Civil Rights Act of 1960,[18] which mandated the retention, preservation, reproduction, and inspection of voting records.[19] The act also provided that if injunctive relief was granted in a suit brought by the Attorney General, the Attorney General could ask the court to find a pattern or practice of discrimination, and individuals in the jurisdiction could apply to the court for a finding that they were qualified to vote.[20]

The Civil Rights Act of 1964[21] also contained provisions relating to voting rights. It required that uniform standards, practices, and procedures be applied in determining qualifications to vote in any federal election; forbid denying the right to vote because of immaterial errors or omissions on registration forms; and mandated that if literacy tests were used, they must be administered to every applicant in writing and a certified copy be provided to the applicant.[22] The act also created a presumption, in any proceeding brought by the Attorney General, that anyone with at least a sixth-grade education possessed sufficient literacy to vote.[23] To expedite voting cases, the act provided that the Attorney General could request a hearing before a three-judge court, with appeal directly to the Supreme Court.[24]

Despite the enactment of these various civil rights laws, the most significant piece of legislation affecting the right to vote was the Voting Rights Act of 1965.[25] Among its provisions, the act:

- prohibited the use, by any state or political subdivision, of any qualification or prerequisite to voting, or any standard, practice or procedure, to deny or abridge the right of any citizen to vote on account of race or color.[26]
- provided authority to the courts, in any proceeding instituted by the Attorney General to enforce the 15th Amendment, to suspend the use of any test or device that the court

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[14] U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After*, January 1975, p. 43 (hereafter cited as USCCR, *Voting Rights Act*).

[15] Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634.

[16] 42 U.S.C. § 1971(b)(c) (1994).

[17] The section of the Civil Rights Act of 1957 that created the Commission on Civil Rights was superseded by the U.S. Commission on Civil Rights Act of 1983, which begins at 42 U.S.C. § 1975 (1994).

[18] Civil Rights Act of 1960, Pub. L. No. 86-449, 74 Stat. 86.

[19] 42 U.S.C. §§ 1974, 1974b (1994).

[20] 42 U.S.C. § 1971(e) (1994).

[21] Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

[22] 42 U.S.C. § 1971(a) (1994).

[23] 42 U.S.C. § 1971(c) (1994).

[24] 42 U.S.C. § 1971(g) (1994).

[25] Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

[26] 42 U.S.C. § 1973 (1994).

had found to have been used to deny or abridge the right to vote.[27]

- provided for the automatic suspension of literacy tests and other devices for five years in states and subdivisions where such tests and devices were maintained on November 1, 1964, and where less than 50 percent of the voting-age population was registered or had voted in the presidential election of 1964. Any state or subdivision could be exempted from this provision by obtaining a declaratory judgment that such tests or devices had not been used to accomplish discrimination in the preceding five years.[28]
- required that covered states and political subdivisions submit to the Attorney General any new or changed voting requirement. The Attorney General then had 60 days to interpose any objections. Alternatively, the state could enforce the new requirement by obtaining a declaratory judgment that it did not have the purpose or effect of denying or abridging rights protected by the 15th Amendment.[29]
- declared Congress' finding that the collection of a poll tax as a precondition to register or to vote in state or local elections denied the constitutional rights of citizens and authorized the Attorney General to institute actions against the enforcement of any requirement of the payment of a poll tax.[30]
- provided for the appointment of federal election examiners and poll watchers upon the order of a court or the Attorney General.[31]
- contained criminal penalties for any official who abridged the right to vote or failed to count the vote of any person, or for anyone who intimidated or threatened any person attempting to vote.[32]

In 1970, the preclearance and other provisions of the Voting Rights Act were extended for another five years, and coverage of the act was expanded to include any state or political subdivision that maintained a test or device on November 1, 1968, and had less than a 50 percent turnout or registration rate in the 1968 presidential election.[33] The act also established a five-year nationwide ban on the use of literacy tests or other devices, prohibited the use of durational residency requirements for presidential elections, and reduced the voting age to 18.[34] In 1975, the act was extended for an additional seven years, and the temporary nationwide ban on the use of literacy tests and other devices was made permanent.[35] The 1975 amendments also expanded the coverage of the act to include language minorities.[36]

The Voting Rights Act thus provided a new cause of action to challenge discriminatory voting practices. One of the most important provisions of the act was section 5, which required approval by the Attorney General of any new voting qualification or prerequisite or any new standard, practice, or procedure with respect to voting in the covered jurisdictions (which included almost all southern states). The Court's broad reading of the application of section 5 was instrumental in preventing new roadblocks to minority voter participation.

South Carolina v. Katzenbach, 383 U.S. 301 (1966): In this case, the Supreme Court considered the constitutionality of certain provisions of the Voting Rights Act of 1965. The state of South Carolina challenged these provisions on the grounds that they exceeded the powers of Congress and encroached on an area reserved to the states. The Court upheld the constitutionality of the act, finding that it was a valid means of carrying out the commands of the 15th Amendment.

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[27] 42 U.S.C. § 1973a(b) (1994).

[28] 42 U.S.C. § 1973b (1994).

[29] 42 U.S.C. § 1973c (1994).

[30] 42 U.S.C. § 1973h (1994).

[31] 42 U.S.C. §§ 1973a, 1973b (1994).

[32] 42 U.S.C. § 1973i (1994).

[33] 42 U.S.C. § 1973b (1994).

[34] 42 U.S.C. §§ 1973aa, 1973aa-1 (1994). The voting age reduction to age 18 was passed in the Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, § 301, 84 Stat. 301. The 26th Amendment later became law on July 1, 1991. The 26th Amendment states, in part, that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." U.S. CONST. amend XXVI. The current version of § 301 deals with the enforcement of the 26th Amendment. 42 U.S.C. § 1973bb (1994).

[35] Voting Rights Act of 1965, amendments, Pub. L. No. 94-73, 89 Stat. 400.

[36] 42 U.S.C. 1973b(f)(1) (1994).

Allen v. State Board of Elections, 393 U.S. 544 (1969): Here, the Supreme Court addressed the applicability of section 5 of the Voting Rights Act to recently passed laws and regulations in Mississippi and Virginia. The changes instituted by the states included a change from district to at-large voting for county supervisors; a change that made superintendents of education in 11 counties appointive instead of elective; changes in the requirements for independent candidates running in general elections; and new procedures for casting write-in votes. The Court held that the Voting Rights Act should be given the broadest scope possible and that all the above changes were subject to the section 5 preclearance requirements.[37] The Court also acknowledged a private right of action, holding that citizens are entitled to seek declaratory judgment that a state has failed to comply with the Voting Rights Act.

Connor v. Johnson, 402 U.S. 690 (1971): In this challenge to a Mississippi reapportionment statute, the Court held that a decree of the district court is not within the reach of section 5 of the Voting Rights Act. The Court also held that when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multimember districts as a general matter.

Perkins v. Matthews, 400 U.S. 379 (1971): The Court considered the applicability of section 5 to several changes in voting procedures instituted by the city of Canton, Mississippi. The Court held that all of the changes, i.e., (1) changes in the locations of polling places, (2) annexations of adjacent areas, and (3) a change from ward to at-large voting for the election of aldermen, were subject to section 5 clearance.

Beer v. United States, 425 U.S. 130 (1976): The city of New Orleans brought this action under section 5 of the Voting Rights Act, seeking a declaratory judgment that a reapportionment of the councilman districts did not have the purpose or effect of denying or abridging the right to vote. Under the city's previous apportionment plan, none of the five districts had a black majority of registered voters. Under the new plan, blacks would constitute a majority of registered voters in one of the five districts. Based on the fact that blacks constituted 35 percent of registered voters in New Orleans, the lower court found that the new plan failed to provide blacks the opportunity to elect council members in proportion to their share of the city's registered voters, and thus it violated section 5. The Supreme Court reversed, holding that the purpose of section 5 was to ensure that there was no retrogression in the position of minorities. Because the new plan enhanced the position of minorities, it could not be found to have the effect of diluting or abridging the right to vote.

Morris v. Gressette, 432 U.S. 491 (1977): In this case, the Supreme Court held that judicial review of the Attorney General's action under section 5 of the Voting Rights Act is precluded.

Presley v. Etowah County Commission, 502 U.S. 491 (1992): Here, the Supreme Court was presented with two consolidated appeals concerning changes in the decisionmaking authority of the elected members of two different county commissions in Alabama. In Etowah County, the commission passed a resolution shortly before the first black member was elected following the commission's restructuring pursuant to a consent decree. Where the commissioners had previously controlled the moneys for road repairs, maintenance, and improvement for their own district, the resolution provided that all such moneys be maintained in a common account for the use of the entire county. In Russell County, the commission passed a resolution delegating control over road construction, maintenance, and inventory to the county engineer, an official appointed by the entire commission and responsible to it. Formerly, the commissioners themselves had exercised such control. The Court reviewed its section 5 cases and determined that there are four contexts in which section 5 applies: (1) changes involving the manner of voting, (2) changes in candidacy requirements and qualifications, (3) changes in the composition of the electorate that may vote, and (4) changes affecting the creation or abolition of an elective office. The Court held that neither of the resolutions at issue fell within the four contexts of changes "with respect to voting," which would make section 5 applicable. Rather, the changes were more in the nature of changes "with respect to governance."

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[37] *See also* B.C. Foreman v. Dallas County, Tex., 521 U.S. 979 (1997) (holding that preclearance was necessary despite the fact that the county was exercising its "discretion" pursuant to state statute when it adjusted the procedure for appointing election judges according to party power); NAACP v. Hampton County Election Comm'n, 470 U.S. 166, 178 (1985) (holding that even administrative efforts to comply with a precleared statute may require separate preclearance because section 5 reaches informal as well as formal changes).

Morse v. Republican Party of Virginia, 517 U.S. 186 (1996): Here, the Supreme Court held that Virginia's Republican Party acted under authority of Virginia when it picked its candidate for United States senator at the party's convention. Therefore, its imposition of a registration fee for voters to become delegates to the convention was subject to section 5 preclearance.

In addition to litigation under section 5 of the Voting Rights Act that challenged changes to voting procedures enacted by states, vote dilution claims continued under the Constitution and section 2 of the Voting Rights Act.[38] These cases often challenged practices such as multimember districts or at-large voting that functioned to minimize the voting strength of minorities.

White v. Regester, 412 U.S. 755 (1973): This case involved a 14th Amendment challenge to two multimember districts in the Texas House of Representatives, claiming that they diluted the voting strength of racial and ethnic minorities. The Court noted it is not enough to allege a population has not had legislative seats in proportion to its voting potential, but the plaintiffs must prove the political process was not equally open to participation by the particular group. The Court upheld the lower court's decision that the districts invidiously discriminated against black and Mexican American voters, finding the evidence of historical political discrimination against these groups and the residual effects of that discrimination sufficient to sustain the judgment.

Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), *aff'd*, *East Carrol Parish School Board v. Marshall*, 424 U.S. 636 (1976): The Fifth Circuit in this case considered a constitutional challenge to at-large elections for school board and police juries in East Carroll Parish, Louisiana. The Court held that while at-large and multimember districting schemes are not per se unconstitutional, they are unconstitutional if it is demonstrated that minorities have less opportunity to participate in the political process and elect legislators of their choice. The Court then delineated a number of factors to be considered in making such a determination, including lack of access to the slating process; unresponsiveness of legislators to the needs of the minority community; a tenuous policy underlying the preference for multimember or at-large voting; the existence of past discrimination; or the existence of large districts, majority vote requirements, and anti-single-shot voting provisions.

The standards from the above cases and the factors outlined in the *Zimmer* decision were used in evaluating and adjudicating claims of minority vote dilution under the Constitution and the Voting Rights Act until a Supreme Court decision in 1980.[39] In *Mobile v. Bolden*,[40] the Court considered whether the at-large system for electing the Mobile, Alabama, City Commission violated the rights of black voters in the city under section 2 of the Voting Rights Act and the 14th and 15th Amendments. A plurality of the Court reversed the decisions of the lower courts, which had found that the at-large system violated the plaintiffs' rights and held that the plaintiffs must demonstrate discriminatory intent to prevail on vote dilution claims.[41]

1982 Amendments to the Voting Rights Act

In response to the *Mobile* decision, the Voting Rights Act was amended again in 1982.[42] The amendments restored the results standard prior to the Supreme Court's decision in *Mobile v. Bolden* and made clear that proof of discriminatory purpose was not necessary to establish a violation of section 2. The new language of the statute read:

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[38] This section provides that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color. . . ." 42 U.S.C. § 1973 (1994).

[39] Mobile v. Bolden, 446 U.S. 55 (1980).

[40] *Id.*

[41] *Id.* at 74.

[42] Voting Rights Act Amendments of 1982, Pub. L. No 97-205, 96 Stat. 131.

> No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color. . . .
>
> A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.[43]

The Senate Judiciary Committee report elaborated on typical factors probative of a section 2 violation:

- The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, vote, or otherwise participate in the democratic process.
- The extent to which voting in the elections of the state or political subdivision is racially polarized.
- The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single-shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group.
- If there is a candidate slating process, whether the members of the minority group have been denied access to that process.
- The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.
- Whether political campaigns have been characterized by overt or subtle racial appeals.
- The extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.[44]

The reinstitution of the results tests was particularly significant with respect to vote dilution claims, where proof of discriminatory motive in the adoption of voting schemes such as multimember districts was increasingly difficult. The elements of proof necessary for a section 2 claim after the 1982 amendments were later clarified by the Supreme Court.

Thornburg v. Gingles, 478 U.S. 30 (1986): In this case, the Supreme Court for the first time addressed the 1982 amendments to the Voting Rights Act. The Court considered a claim that multimember districts for the North Carolina Legislature diluted black voting strength in violation of section 2. In addition to consideration of the relevant factors delineated in the Senate report accompanying the section 2 amendments, the Court held that the following three factors must be established to prove claims of vote dilution under section 2: (1) the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group must be able to show that it is politically cohesive; and (3) the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate.

Chisom v. Roemer, 501 U.S. 380 (1991): The Supreme Court in this case held that section 2 of the Voting Rights Act applies to judicial elections.

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[43] 42 U.S.C. § 1973(a)–(b) (1994).

[44] S. Rep. No. 97-417, 97th Cong., 2d Sess. 28–29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206–07.

Growe v. Emison**,** 507 U.S. 25 (1993): In this case, the Supreme Court held that the three prerequisites identified in *Thornburg v. Gingles* as necessary to establish a vote dilution claim with respect to a multimember districting plan are also necessary to establish a vote fragmentation claim with respect to a single-member district.

Voinovich v. Quilter**,** 507 U.S. 146 (1993): The Supreme Court recognized that manipulation of district lines can dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely out-vote them, or by packing them into one or a small number of districts to minimize their influence in the neighboring districts. In 1996, however, the Court vacated its earlier decision based upon its holdings in *Shaw v. Hunt*, 517 U.S. 899 (1996), and *Bush v. Vera* 517 U.S. 952 (1996) (below), and remanded the case to the district court. Applying rational basis scrutiny, the district court upheld the redistricting plan, finding that it did not violate the equal protection clause.[45]

Holder v. Hall**,** 512 U.S. 874 (1994): This case involved a section 2 vote dilution challenge by black plaintiffs against Bleckley County, Georgia's single-commissioner form of government. The plaintiffs claimed that the county should have a commission of sufficient size so that, with single-member districts, the county's black citizens could constitute a majority in one of the districts. The Supreme Court held that, because there was no objective and workable benchmark against which to compare the existing practice, a challenge to the size of a governing authority could not be maintained under section 2.

Johnson v. De Grandy**,** 512 U.S. 997 (1994): Addressing a redistricting plan in Florida, the Supreme Court held that the proportionality (the percentage of majority-minority districts compared with the percentage of minorities throughout the state) of race was a relevant consideration in redistricting decisions. The Court also noted that the ultimate goal of section 2 is equality of proportionality, not a guarantee of electoral success for minority preferred candidates of whatever race.

In 1997, the Supreme Court addressed the interplay between sections 2 and 5 of the Voting Rights Act. In *Reno v. Bossier Parish*, the Supreme Court addressed the issue of whether the Justice Department may consider if a legislative plan violates section 2 of the Voting Rights Act in determining whether to grant preclearance under section 5 of the act.[46] The Court held that preclearance may not be denied solely on the basis that the voting plan violates section 2 but left open the Department's ability to use evidence of a section 2 violation in some degree when deciding whether there is retrogression in the position of minorities.[47]

Challenges to Majority-Minority Districts

For most of this century, voting rights actions brought under the Constitution have challenged practices that either were intended to or had the effect of abridging or denying the rights of minorities to vote. Often in vote dilution cases challenging at-large or multimember districts, the remedy ordered by the court or agreed to by the parties involved the creation of single-member election districts with majority voting-age populations. More recently, 14th Amendment claims have been raised in opposition to the creation of majority-minority districts.

United Jewish Organizations of Williamsburgh, Inc. v. Carey**,** 430 U.S. 144 (1977): In this case, a group of Hasidic Jews challenged a New York State reapportionment plan, alleging that their 14th and 15th Amendment rights were violated when a portion of their community was reassigned to an adjoining district in an alleged effort to achieve a racial quota in districts. The Supreme Court held that the use of racial criteria by the state in attempting to comply with section 5 of the Voting Rights Act did not violate the 14th or 15th Amendments. The Court further held that compliance with the act often requires the use of racial considerations in drawing district lines, and the Constitution does not prevent the state from deliberately creating or preserving black majorities in particular districts in order to comply with section 5.

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[45] Quilter v. Voinovich, 981 F. Supp. 1032 (N.D. Ohio 1997), *aff'd*, 523 U.S. 1043 (1998).

[46] Reno v. Bossier Parish Sch. Bd., 520 U.S. 471 (1997).

[47] *Id.* at 486–90.

Shaw v. Reno, 509 U.S. 630 (1993): In this case, the Court considered a 14th Amendment challenge by white voters to the creation of two majority-black congressional districts in North Carolina. The Supreme Court held that the plaintiffs stated a cognizable claim under the equal protection clause of the 14th Amendment by "alleging that the legislation, though race neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification."[48]

DeWitt v. Wilson, 856 F. Supp. 1409 (E.D. Cal. 1994), *aff'd in part and appeal dismissed in part,* 515 U.S. 1170 (1995): The court in this case considered a challenge under the 14th and 15th Amendments to California's redistricting plan claiming that it was a racial gerrymander and diluted white voter strength. The court rejected the claim, finding that the plan was not a racial gerrymander, but instead properly considered race as one of many factors along with traditional redistricting principles and the requirements of the Voting Rights Act. The court found that strict scrutiny is not required. The court found, however, that even if strict scrutiny were required, the California plan was narrowly tailored to meet a compelling state interest.

Miller v. Johnson, 515 U.S. 900 (1995): The Court in this case considered the constitutionality of Georgia's 11th Congressional District, which was one of three majority-black districts created as a result of the Georgia Legislature's 1992 congressional redistricting plan. The Court first upheld the lower court's finding that race was the predominant factor motivating the drawing of the 11th District, thus mandating the application of strict scrutiny. The Court found that the state's true interest in designing the 11th District was not to remedy previous discrimination, but was to create a third majority-black district to satisfy the Justice Department's preclearance demands. The Court, assuming arguendo that satisfying the Justice Department's preclearance demand was a compelling interest, held that the adopted plan was not narrowly tailored to meet that interest since Georgia's two previous plans could not have violated section 2 of the Voting Rights Act.[49]

Shaw v. Hunt, 517 U.S. 899 (1996): In this case, the Court again considered the equal protection challenge to North Carolina's redistricting plan, which created two majority-black districts. On remand from *Shaw v. Reno,* the district court upheld the constitutionality of the plan, finding that it was narrowly tailored to further the compelling interest of complying with sections 2 and 5 of the Voting Rights Act. The Supreme Court reversed the lower court decision, holding that the plan was not narrowly tailored to further a compelling state interest. The Court assumed, but did not decide, that compliance with section 2 could be a compelling state interest. The Court held that to be narrowly tailored the action must remedy the anticipated violation or achieve compliance. In this case, the Court found that the district could not remedy a potential violation of section 2 because the district did not contain a geographically compact population.

Bush v. Vera, 517 U.S. 952 (1996): The Court in this case considered an equal protection challenge to three majority-minority voting districts in Texas. The Court found that the districts were subject to strict scrutiny, and that they were not narrowly tailored to serve a compelling state interest. Again, the Court assumed that compliance with section 2 could be a compelling state interest, but held that the districts in this case were not narrowly tailored because they were bizarrely shaped and far from compact, which was attributable to racially motivated gerrymandering that subordinated traditional districting principles to race substantially more than was reasonably necessary. The Court also held that for an interest in remedying discrimination to be compelling, the discrimination must be specific and identified.

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[48] Shaw v. Reno, 509 U.S. 630, 649 (1993), *rev'd,* Shaw v. Reno, 517 U.S. 899 (1996).

[49] The case was remanded to the district court, which deferred to the State Legislature. After the Legislature was unable to reach agreement, the court drew its own plan, containing one majority-black district. The district court's plan was challenged by voters and by the United States alleging that the plan did not adequately take into account the interests of Georgia's black population. The Supreme Court upheld the district court's plan in Abrams v. Johnson, 521 U.S. 74 (1997).

Lawyer v. Department of Justice, 521 U.S. 567 (1997): The Court reviewed a legislative district of the Florida Legislature. In holding that the district was constitutional, the Court noted that the evidence supports the trial court's opinion that race did not predominate Florida's districting decision. The appellants had argued that there was a subordination of traditional districting principles evidenced by the facts that the district encompassed more than one county, crossed a body of water, was irregular in shape, and contained a percentage of black voters higher than the overall black population in the constituent counties. The Court found that on each of the points, the district was no different from what Florida's traditional districting principles could be expected to produce.

In the midst of the litigation regarding redistricting and the Voting Rights Act, another issue affecting redistricting has garnered attention. Subsequent to the 1990 census, the Census Bureau found that it had undercounted the population. Based on the results of a "post-enumeration survey," which attempted to measure the rate at which people were omitted or erroneously enumerated by the census, the Census Bureau determined that the 1990 census resulted in a national undercount of 2.1 percent, or approximately 5.3 million persons out of a total population of approximately 255 million.[50] The undercount was greater for members of racial and ethnic minorities. Hispanics were undercounted by 5.2 percent, African Americans by 4.8 percent and Asian and Pacific Islanders by 3.1 percent.[51]

HISTORY OF VOTING RIGHTS IN MISSISSIPPI

The state of Mississippi was particularly resistant, even among southern states, to the provision and protection of voting rights for African Americans following the Civil War. Blacks in Mississippi did enjoy quick but short-lived political participation during Reconstruction. In 1870, for example, 30 of the 107 members of the Mississippi State House of Representatives were African American, as were five of the 30 state senators. At that time, African Americans represented a majority of registered voters in Mississippi.[52]

This progress though did not last long. Those who were against black suffrage resorted to various means to restrict the black vote. In 1890, Judge J.J. Chrisman stated:

> It is no secret that there has not been a full vote and a fair count in Mississippi since 1875—that we have been preserving the ascendancy of the white people by revolutionary methods. In plain words we have been stuffing the ballot boxes, committing perjury, and . . . carrying the elections by fraud and violence until the whole machinery was about to rot down. No man can be in favor of the election methods which have prevailed . . . who is not a moral idiot.[53]

Further, although the Military Reconstruction Acts of 1867 had required southern states to adopt new constitutions granting suffrage rights to African American males, the states were not prevented from later changing their constitutions. At Mississippi's constitutional convention in 1890, the so-called Mississippi plan was adopted, which included several provisions intended to deny blacks the right to vote, including a poll tax; a literacy test; a durational residency requirement; a disenfranchising crimes provision; and a dual registration system, which required separate voter registration for municipal elections.[54] The goal of the convention was to "devise such measures, consistent with the Constitution of the United States, as will enable us to maintain a home government, under the control of the white people of the state.'"[55] The Supreme Court upheld the constitutionality of Mississippi's new constitutional provisions, finding that the restrictions on voting did not violate the 14th Amendment, because they did not, on their face, discriminate between the races and because it had not been shown that the actual administration was evil.[56] These restrictions were codified by the Mississippi Legislature in 1892, and thereafter, the number of blacks registered to vote dropped to 6 percent of the eligible population.[57]

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[50] City of New York v. U.S. Dept. of Commerce, 34 F.3d 1114, 1121 (2d Cir. 1994), *rev'd*, 517 U.S. 1 (1996).

[51] *Id.* at 1121–1122. Reversing the Second Circuit's opinion, the Supreme Court held that the decision by the Secretary of Commerce not to statistically adjust the census using the postenumeration survey violated neither the Constitution nor federal law. Wisconsin v. City of New York, 517 U.S. 1, 24 (1996).

[52] Frank R. Parker, David C. Colby, and Minion K.C. Morrison, "Mississippi," in *Quiet Revolution in the South*, eds. Chandler Davidson and Bernard Grofman (Princeton, NJ: Princeton University Press, 1994), pp. 136–37.

[53] James W. Silver, *Mississippi: The Closed Society* (New York: Harcourt, Brace & World, Inc., 1964), p. 16.

[54] Mississippi State Chapter, Operation PUSH v. Allain, 674 F. Supp. 1245, 1251 (N.D. Miss. 1987) *aff'd sub nom.*, Mississippi State Chapter, Operation PUSH v. Mabus, 932 F.2d 400 (5th Cir. 1991) (citing MISS. CONST. of 1890, art. 12, §§ 241, 243, 244). The dual registration requirement remained until it was finally overturned in 1987. At that time, Mississippi was the only state to have such a requirement.

[55] United States v. Mississippi, 229 F. Supp. 925, 985 (S.D. Miss. 1964), *rev'd*, 380 U.S. 128 (1965) (Judge Brown dissenting) (quoting Senator George).

Efforts in Mississippi to increase and maintain black disenfranchisement continued throughout the 20th century. With the inception of primaries in 1902, the Democratic Party permitted only white Democrats to participate.[58] After the Supreme Court outlawed the whites-only primaries, the Mississippi State Democratic Party passed a resolution in 1947 requiring those citizens who wished to vote in the primaries to swear allegiance to the principles of the party, which included opposition to federal legislation abolishing the poll tax, punishing lynching, and establishing a fair employment practice commission.[59]

In response to the beginnings of the voter registration movement in the 1950s, the Mississippi Legislature in 1955 enacted several provisions intended to prevent black voter registration, including a prohibition on satellite registration and removal of the voter registration book from the county registrar's office.[60] This measure eliminated a previous statutory requirement that registrars visit each precinct in the county to register voters, and meant that citizens had to travel to the county courthouse to register to vote, often many miles away—a burden much more difficult for blacks, who tended to be poorer and had less access to transportation.[61] Black voter registration in Mississippi, which had reached 22,000 citizens in 1954, dropped to 12,000 the next year.[62]

In 1960, the Mississippi Constitution was amended to require "good moral character" as a qualification for voting, and in 1962 the Mississippi Legislature passed a series of provisions to stop black voter registration. These measures included a "good moral character" requirement and a procedure for challenging the moral character of any applicant; a prohibition on any assistance in filling out voter registration forms; a ban on registrars providing applicants with reasons for rejecting their applications for registration; a requirement that the names and addresses of all applicants be published in the local paper; a requirement that the applicant copy a section of the constitution selected by the registrar and write an interpretation of the section and a statement of the duties and obligations of citizenship; and a requirement that no application be approved unless all the blanks on the form were properly and responsively filled out and both the oath and the application form signed separately.[63] In 1962, the State Legislature also enacted a statute requiring all municipalities with a mayor-board of alderman form of government to elect their aldermen on an at-large basis. The purported purpose of this law was "to maintain our southern way of life."[64] Recently opened records of the Mississippi Sovereignty Commission reveal that one circuit clerk in Union County remarked to an investigator to the Sovereignty Commission that black registration was going well because the people signing up were "good Negroes, not riffraff."[65] The clerk reportedly indicated that voter law restrictions, including the poll tax and a literacy test, were keeping "riffraff" off the voting rolls.[66]

As a result of these statutory and constitutional restrictions, along with extensive and brutal voter intimidation and violence, only 6.7 percent of the eligible blacks in Mississippi were registered to vote in 1964.[67] In the Delta county of Sunflower there were 13,000 eligible black voters, but fewer than 200 were registered. Similarly, in Leflore County, only 250 blacks were registered out of a black population of approximately 30,000.[68] The Mississippi State Legislature remained all white, in a state with a 42 percent black population, and the only black elected officials in the state were the mayor and city council of the all-black town of Mound Bayou.[69]

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[56] Williams v. Mississippi, 170 U.S. 213, 225 (1898).

[57] Chandler Davidson, "The Voting Rights Act: A Brief History," in *Controversies in Minority Voting: The Voting Rights Act in Perspective*, eds. Bernard Grofman and Chandler Davidson (Washington, DC: The Brookings Institution, 1992), p. 11.

[58] United States v. Mississippi, 229 F. Supp. at 988.

[59] *Id.* at 988–89; Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944–1969* (New York: Columbia University Press, 1976), p. 2.

[60] Mississippi State Chapter, Operation PUSH v. Allain, 674 F. Supp. 1245, 1251–52 (N.D. Miss. 1987), *aff'd sub nom.*, Mississippi State Chapter, Operation PUSH v. Mabus, 932 F.2d 400 (5th Cir. 1991).

[61] *Id.*; John Dittmer, *Local People: The Struggle for Civil Rights in Mississippi* (Urbana, IL: University of Illinois Press, 1994), pp. 70–71.

[62] Mississippi State Chapter, Operation PUSH v. Allain, 674 F. Supp. 1245, 1252 (N.D. Miss. 1987), *aff'd sub nom.*, Mississippi State Chapter, Operation PUSH v. Mabus, 932 F.2d 400 (5th Cir. 1991); Dittmer, *Local People*, pp. 70–71.

[63] Operation PUSH, 674 F. Supp. at 1252 (citing 1962 Miss. Laws 570, 575); United States v. Mississippi, 229 F. Supp. at 996–97.

[64] Frank Parker, *Black Votes Count* (Chapel Hill, NC: University of North Carolina Press, 1990), p. 161.

[65] "Racist Agency's Records Revealed," *The Washington Times*, Mar. 18, 1998, p. A6.

[66] Ibid.

Voter registration rates for African Americans changed dramatically following passage of the Voting Rights Act, with the black registration rate in Mississippi rising to 59.8 percent of eligible voters by 1967.[70] In response to the Voting Rights Act, the Mississippi Legislature in its 1966 session passed a series of measures changing the state's election laws, including switching from district to countywide elections; increasing filing requirements for independent candidates; changing elected positions to appointed ones; and combining majority-black counties with majority-whites ones. As a result, 14 counties replaced district elections with at-large elections for county boards of supervisors, 22 counties switched from district to at-large elections for county boards of supervisors, 22 counties switched from district to at-large elections for county school board races, and 46 towns and cities in Mississippi changed to at-large elections for city council races.[71]

State officials also engaged in racial gerrymandering in the years following passage of the Voting Rights Act, particularly with respect to Mississippi's five congressional districts. The Mississippi Delta region, which has always had the largest population of blacks in the state, historically constituted a single congressional district, beginning in 1882 and continuing through redistricting plans adopted in 1932, 1952, and 1962. In 1966, however, the Legislature redrew the lines of the district and divided the Delta region among three congressional districts, resulting in a majority white voting-age population in all five districts.[72] Racial gerrymandering also occurred with respect to county supervisor districts, preventing the election of black supervisors even with the existence of single-member districts.[73]

Obstacles to black voting and candidacy continued in Mississippi, as documented by the Commission during the 1970s. Blacks attempting to register and vote faced dual registration requirements, erratic hours at the clerks' offices, intimidation and humiliation by registration officials, purging of voter registration rolls, denials of ballots, and the location of polling places in all-white clubs and lodges.[74] African Americans seeking elective office also encountered barriers that made running for office and winning extremely difficult. These barriers included filing fees; obstruction by officials in obtaining information about qualifying to run and lists of registered voters; restrictions on and interference with the use of poll watchers by black candidates; discrimination in vote counting; limited access to the white community during campaigns; and restrictions on independent and third-party candidates.[75]

Litigation under the Constitution and the Voting Rights Act, in addition to section 5 objections entered by the Department of Justice, were instrumental in increasing access to the political process for black citizens of Mississippi and preventing implementation of laws enacted by the Mississippi Legislature intended to prevent black voter registration and participation.

Dyer v. Love, 307 F. Supp. 974 (N.D. Miss. 1969): This case concerned the districts for the Washington County Board of Supervisors. The court held that absent clearance by the Attorney General under section 5 of the Voting Rights Act, the board of supervisors for Washington

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[67] USCCR, *Voting Rights Act*, p. 43, table 3. This registration rate was low even in comparison to other southern states, where the black registration rates were as follows: Alabama, 19.3 percent; Georgia, 27.4 percent, Louisiana, 31.6 percent; North Carolina, 46.8 percent; South Carolina, 37.3 percent; and Virginia, 38.3 percent. Even though the registration rates for African Americans in these states were higher in comparison to Mississippi, they still were 30 to 50 percentage points lower than white registration rates. Ibid.

[68] Dittmer, *Local People*, pp. 70–71.

[69] USCCR, *Voting Rights Act*, pp. 128–29.

[70] Ibid., p. 43.

[71] Parker, *Black Votes Count*, pp. 34–35.

[72] Ibid., pp. 41–43.

[73] Ibid., pp. 152–56.

[74] USCCR, *Voting Rights Act*, pp. 69–130.

[75] Ibid., pp. 131–72.

County did not have the authority to order at-large elections for county supervisor positions.

Moore v. Leflore County Board of Election Commissioners, 502 F.2d 621 (5th Cir. 1974): The court in this case upheld the decision of the lower court, which ordered the county to hold district elections rather than at-large elections for the Leflore County Board of Supervisors because at-large elections diluted black voting strength and failed to take into consideration legitimate planning objectives. The court also rejected a county reapportionment scheme that diluted black voting strength and adopted another plan that created a majority-black voting-age population in four out of the five districts.

Stewart v. Waller, 404 F. Supp. 206 (N.D. Miss. 1975): This case involved a challenge under the 14th and 15th Amendments to the 1962 Mississippi statute that required at-large elections for all aldermen and city council positions in municipalities, where they formerly had been elected from wards. The court held that the statute violated the 14th and the 15th Amendments as a purposeful device conceived and operated to further racial discrimination in voting.

O'Neal v. Simpson, 350 So. 2d 998 (Miss. 1977), *cert. denied*, 435 U.S. 934 (1978): The Mississippi Supreme Court in this case considered a challenge to a Mississippi statutory provision that dictated that illiterate voters could receive assistance only from election managers whereas blind and disabled voters could receive assistance from any person of their choice. The court held that the provision violated the equal protection clause of the 14th Amendment.

Black political participation and registration in Mississippi began to increase slowly throughout the 1970s and 1980s. Mississippi elected 22 black candidates statewide in the 1967 elections, mostly in justice of the peace and constable offices.[76] Included in this number was the state's first black state legislator elected since Reconstruction, Robert Clark, who testified, "I was elected November 1967. And, incidentally, when Mayor Blackwell was talking about not being able to vote, . . . the first time I voted, I voted for myself in 1967."[77] In 1968, Mississippi had a total of 29 black elected officials, and by 1974, this number had risen to 191. As of 1974, however, Mississippi still had only one black state legislator, far fewer than other southern states, all of which had lower black populations. For example, Alabama had 15 black state legislators, Georgia 22, Louisiana 9, North Carolina 6, and South Carolina 13.[78] The primary reason for the dearth of black state legislators was the election plan in use at that time, which comprised mostly multimember districts. In 1971, 29 black candidates ran for office in multimember districts, and all but one of them were defeated. By 1979 Mississippi instituted a new single-member district plan for the Legislature, and 17 blacks were elected, 15 to the House and two to the Senate.[79]

A new plan for Mississippi's congressional seats also led to the election of the state's first black congressman. In 1981, the Department of Justice filed a section 5 objection to Mississippi's congressional district plan. As a result, a federal judge developed a new plan, including the Second Congressional District, which encompassed the Delta region and created the only majority-black district.[80] In 1986, Mike Espy was elected from that district, becoming the first black congressman from Mississippi since Reconstruction.

During the 1980s, many battles were still being fought in Mississippi with respect to local election districts to ensure the protection of voting rights for African Americans. Litigation continued, with the filing of more than 30 county redistricting cases, and Mississippi's dual registration system, in effect since 1890, was finally overturned.[81] The Department of Justice continued to monitor changes in election procedures in

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[76] Parker, *Black Votes Count*, p. 72; *The Commercial Appeal*, Jan. 3, 1993, p. A9.

[77] Robert Clark, testimony before the U.S. Commission on Civil Rights, hearing, Greenville, MS, Mar. 6–8, 1997, transcript, p. 705 (hereafter cited as Hearing Transcript).

[78] USCCR, *Voting Rights Act*, pp. 50–51, 63.

[79] Parker, *Black Votes Count*, pp. 122–26.

[80] *See* Jordan v. Winter, 604 F. Supp. 807 (N.D. Miss.), *aff'd*, 469 U.S. 1002 (1984), in which the court held that the interim congressional redistricting plan, which divided the black population of the state into two high-impact districts rather than concentrating it into one district, violated section 2 by diluting minority voting strength. The court then approved a new plan that provided for a black voting-age majority in one of Mississippi's five congressional districts.

[81] Mississippi State Chapter, Operation PUSH v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), *aff'd sub nom.*, Mississippi State Chapter, Operation PUSH v. Mabus, 932 F.2d 400 (5th Cir. 1991).

Mississippi, entering 48 section 5 objections to redistricting plans in 28 counties.[82]

Kirksey v. Board of Supervisors, of Hinds County, Mississippi, 554 F.2 139 (5th Cir.), *cert. denied,* 434 U.S. 968 (1977): This case involved a challenge by black plaintiffs to the establishment of a court-approved plan proposed by the Hinds County Board of Supervisors for voting districts in Hinds County, Mississippi. The plan created five districts that divided the predominately black city of Jackson, none of which had a majority voting-age population. Although the county had a black population of 39.1 percent, no black had ever been elected to a county office. The Fifth Circuit held that the plan violated the 14th and 15th Amendments because it canceled or minimized the voting strength of the black minority by fragmenting a geographically concentrated minority and perpetuating a history of denial of access. On remand, the district court in *Kirksey v. Board of Supervisors, of Hinds County, Miss.,* 468 F. Supp. 285 (S.D. Miss. 1979), approved the new plan that created two districts that had black voting-age populations of 55 percent or more. In the 1979 county elections, two black candidates were elected as county supervisors. They were the first black county supervisors elected in Hinds County since Reconstruction.[83]

Jordan v. City of Greenwood, Mississippi, 599 F. Supp. 397 (N.D. Miss. 1984): In this case, the court found that Greenwood's at-large commission form of government violated section 2 of the Voting Rights Act.

Mississippi State Chapter, Operation PUSH v. Allain, 674 F. Supp. 1245 (N.D. Miss. 1987), *aff'd sub nom.,* ***Mississippi State Chapter, Operation PUSH v. Mabus,*** 932 F.2d 400 (5th Cir 1991): In this case, the court considered a section 2 challenge to a dual registration requirement and a prohibition on satellite voter registration. Under Mississippi statute, to be a qualified elector for all municipal elections, a resident was required to register with the municipal clerk after having registered at the office of the county registrar. In addition, only municipal clerks who had been appointed as deputy county registrars were eligible to register voters for county, state, and federal elections. This often required residents to travel long distances to a county seat in order to register for nonmunicipal elections and resulted in a black voter registration rate that was 25 percent below that of white citizens. The court found these practices to be in violation of section 2 of the Voting Rights Act.[84]

Martin v. Allain, 658 F. Supp. 1183 (S.D. Miss. 1987): In this case, the court considered a section 2 challenge to the at-large post-election methods and the multimember districts used to elect circuit, chancery, and county court judges. The court held that although many of the factors considered in the "totality of the circumstances" test applied to all the judicial districts, the plaintiffs proved a violation of section 2 only with respect to certain districts, those in which there was a sufficiently large and geographically compact minority group which could constitute a majority in a single-member district. In *Martin v. Mabus,* 700 F. Supp. 327 (S.D. Miss. 1988), the court ordered the creation of single-member subdistricts as a remedy for the section 2 violation in *Martin v. Allain.*

As a result of these and similar actions, the number of black elected officials in Mississippi began to rise gradually throughout the 1980s and into the 1990s. Many majority-black counties in the Mississippi Delta, that had no or only one black supervisor until the late 1980s, began to elect black representatives (see appendix A). Similar increases occurred with respect to black representation in municipal elected offices. Whereas in 1965 most cities and towns in Mississippi elected city council and board of aldermen members through at-large elections, by

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[82] Parker, *Black Votes Count,* p. 152. Each county in Mississippi is governed by a five-member board of supervisors. The districts from which the supervisors are elected also function as election districts for school board members, election commissioners, justices of the peace, and constables. Ibid., pp. 152–53.

[83] Ibid., p. 156.

[84] The district court gave the Mississippi Legislature the opportunity to cure the violation. In its 1988 session, the Legislature enacted legislation eliminating the dual registration requirement and establishing satellite registration. The district court determined that the legislation cured the violations of the Voting Rights Act. Mississippi State Chapter, Operation PUSH v. Mabus, 717 F. Supp. 1189 (N.D. Miss. 1990), *aff'd,* 932 F.2d 400 (5th Cir. 1991).

1988 most had converted to ward or single-member district plans. As a result, the number of black elected officials on municipal governing bodies rose substantially throughout the 1980s, nearly doubling between 1984 and 1993 (see appendix B).

CURRENT POLITICAL REPRESENTATION IN MISSISSIPPI

Although progress was slow, by the mid-1990s Mississippi had more black elected officials than any other state. Particularly in the Delta, where all the counties are majority black, political representation for African Americans has risen significantly.

Redistricting at the state and local levels continued after the 1990 census. Litigation filed in 1991 resulted in reapportionment of the State Legislature after which the number of black representatives doubled. Before redistricting the State Legislature was 11 percent black in a state with a black voting-age population of 31.6 percent. By the time of the Commission's hearing in March 1997, the State Legislature was 25.9 percent black, with 10 black senators, up from two, and 35 black representatives, up from 21.[85] Robert Clark testified that there were several majority-black districts that did not elect a black member due to political differences among the black voting population.[86]

Testimony given at the Commission's hearing indicated that Mississippi now has more black elected officials than anywhere else in the United States.[87] By the end of 1992, there were more than 825 black elected officials in Mississippi.[88] Overall, nearly 200 black elected officials were women.[89] Unita Blackwell noted, however, that women are not adequately represented in leadership position: "We are the workers, but we [are] still . . . trying to come into our own. And I'm not just talking about black women; I'm talking about all women in the Mississippi Delta."[90]

Some reports indicate that with the dramatic increase in black representation in the Mississippi Legislature, there has been racial polarization among the members of the Legislature. State Representative Barney Scobey stated he had never seen a session more divided along racial lines than the one ending in April 1993 in which black representation in the Mississippi Legislature had doubled.[91] White lawmakers counter that black lawmakers "can't deliver politically . . . simply because they are not in step with a majority of voters in Mississippi."[92] As recently as March 1998, the state Senate voted along racial lines, 39 to 9, rejecting a proposal to compensate the families of civil rights workers killed during Mississippi's civil rights era.[93]

In 1949, political scientist V.O. Key stated that "the beginning and the end of Mississippi politics is the Negro."[94] Race and politics continue to be intertwined in Mississippi nearly half a century later. For example, in the 1995 mayoral election in Greenville, George Patton, a Greenville city councilman and mayoral candidate, accused Paul Artman, a fellow councilman and mayoral candidate, of conspiring to prevent a black majority on the council.[95] Both candidates were white. Artman and the others alleged to be involved denied the charges. Artman, who ultimately won the race, stated he was "greatly saddened for Greenville that everything must turn to race, especially when it comes to political gains."[96]

Racial Bloc Voting

The increase in the number of black elected officials in Mississippi can be attributed primarily to the creation of majority-black districts.[97] In the 1980s, almost 90 percent of the black southern legislators were elected from majority-black districts. Only four of the nearly 600 black elected officials in Mississippi in 1988 were elected from majority white districts, and only 19 were from districts that were less than 65 percent black.[98] Similarly, throughout the South, much of the increase in the number of black southern legislators has resulted from an increase in the number of majority-black districts.[99]

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[85] Clark Testimony, Hearing Transcript, p. 706.

[86] Ibid., pp. 706–07.

[87] Unita Blackwell Testimony, Hearing Transcript, pp. 686–87; Clark Testimony, Hearing Transcript, p. 687.

[88] Dittmer, *Local People*, p. 426.

[89] Ibid., p. 427.

[90] Blackwell Testimony, Hearing Transcript, p. 688. The first black female legislator in Mississippi was not elected until a special election in 1985 to fill a vacancy. In 1987, Mississippi became one of the first Deep South states to have a black woman in the State Senate when Senator Alice Hardin was elected, in Parker, *Black Votes Count*, pp. 142–43.

[91] National Public Radio, "Black Caucus Unable to Get Bills in Mississippi Passed," Morning Edition, Apr. 30, 1993.

[92] Ibid. (quoting Mississippi State Senator Mike Gunn).

[93] "No Money for Rights Slayings," *The Washington Post*, Mar. 5, 1998, p. A8.

[94] V.O. Key Jr., *Southern Politics in State and Nation* (New York: Knopf, 1949), p. 229 (cited in Parker, *Black Votes Count*, p. 161).

[95] Valerie Buckingham, "Stories Differ On What Went Down in Mayor's Office," *The Delta Gazette*, Nov. 2, 1995, p. 3.

[96] Ibid.

[97] Parker, *Black Votes Count*, p. 136.

Witnesses at the Commission's hearing expressed some optimism that white crossover voting existed. Benjamin Griffith noted that Mike Espy received a substantial amount of white support in his re-election to the Congress in 1988.[100] In his first bid for the seat, however, former Congressman Espy received little white support.[101] Further, after hearing evidence in 1987 from both sides' experts whose results and conclusions were "essentially the same," the court in *Martin v. Allain* found that "racial polarization of voters exists throughout the State of Mississippi . . . blacks overwhelmingly tend to vote for blacks and whites almost unanimously for whites in most black versus white elections."[102]

Benjamin Griffith expressed concern that the gains made by enforcement of the Voting Rights Act will be "questioned because of a few—and I emphasize, a very few—instances of either local or statewide racially gerrymandered districts. This is not good. And I think it comes back to a concern that the Voting Rights Act through utilization of race-predominant districting has turned into a resegregation tool."[103] Referring to the recent Supreme Court voting rights cases, Benjamin Griffith testified to the Commission that:

> Those cases have generated few racial gerrymander challenges, not in the Delta, but in counties that are peripheral to the Delta. And my concern is we've created in some cases unjustifiable majority/minority districts. In this context I mean unjustifiable in the sense of shape and race being the predominant motive for creating those. . . . Hopefully, that will not be the case in Mississippi, but I've got grave concerns about the Second Congressional District [in Mississippi] . . . We don't need litigation over racially gerrymandered districts to start undercutting the massive and worthy gains that fighting and litigation and

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[98] *See* Martin v. Allain, 658 F. Supp. 1183, 1195 (S.D. Miss. 1987) (four blacks elected from majority-white districts); Martin v. Mabus, 700 F. Supp. 327, 333–34 n. 1 (S.D. Miss. 1988) (19 black officials elected from majority-black districts with less than 65 percent black). The "65-percent rule" has been widely recognized by courts as the percentage at which black voters will be able to elect the candidates of their choice. The figure reflects the reality that blacks generally constitute a smaller proportion of the voting-age population than of the total population, are registered to vote at lower rates than whites, and turn out to vote at lower rates than whites. *See, e.g.*, Ketchum v. Byrne, 740 F.2d 1398, 1415–17 (7th Cir. 1984), *cert. denied*, 471 U.S. 1135 (1985) (indicating that the 65-percent rule is widely recognized and accepted). *But see* James v. City of Sarasota, Fla., 611 F. Supp. 25, 32–33 (M.D. Fla. 1985) (appending a letter from Justice Department explaining that "[t]here is no 65% threshold population figure applied as a rule of thumb by the Department in redistricting matters reviewed under Section 5").

[99] Lisa Handley and Bernard Grofman, "The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations," in *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965–1990*, eds. Chandler Davidson and Bernard Grofman (Princeton, NJ: Princeton University Press, 1994), pp. 335, 337.

[100] Benjamin Griffith Testimony, Hearing Transcript, p. 698. Espy won the respect of the white planters in his Delta district by supporting their interests as a member of the House Agriculture Committee. He received 40 percent of the white vote in his re-election. Dittmer, *Local People*, p. 426. In 1995, the district court in Northern Mississippi noted racial bloc voting in Calhoun County but also noted a diminution of racially polarized voting. Clark v. Calhoun County, Miss., 881 F. Supp. 252 (N.D. Miss. 1995), *rev'd*, 88 F.3d 1393 (5th Cir. 1996).

[101] Griffith Testimony, Hearing Transcript, p. 698. In 1986, Mike Espy ran as a Democrat and challenged white Republican incumbent Webb Franklin. Espy narrowly won, receiving 97 percent of the black vote and 12 percent of the white vote. Martin v. Allain, 658 F. Supp. 1183, 1194 (S.D. Miss. 1987). In the 1996 congressional elections, five incumbent black representatives who had originally won election from majority-black districts retained their seats despite changes to their districts following wrongful districting challenges. Despite their victories, however, it should be noted that the races still exhibited racially polarized voting. For example, only 31 percent of white voters from Georgia's 11th District voted for black incumbent Cynthia McKinney and only 36 percent of white voters in the state's Second District voted for black incumbent Sanford Bishop. Moreover, in two districts, black voters still constituted a plurality of voters.

[102] Martin v. Allain, 658 F. Supp. 1183, 1194 (S.D. Miss. 1987). Moreover, sociologist James Loewen analyzed the results of the voting in a citywide referendum regarding whether the city should reform its at-large commission form of government or replace it with a council whereby nine council members would be elected from single-member districts. Loewen found that, if one knew the voter's race, one could predict the direction of the vote with 95.7 percent accuracy. Whites voted to keep the commission form; blacks voted to change to the council form. Jerry Himelstein, "Rhetorical Continuities in the Politics of Race: The Closed Society Revisited," *The Southern Speech Communication Journal*, vol. 48 (Winter 1983), p. 153.

[103] Griffith Testimony, Hearing Transcript, p. 694.

> years of toil have led us. And these are good results that I'm afraid that, at least in some quarters, are being jeopardized.[104]

Barriers to Black Political Participation

Although significant progress has been made, subtle barriers to full political participation remain. Black voter registration and voting still lag behind that of white citizens.[105] Luther Alexander testified that "[v]oter registration hasn't been a problem, but we have had problems in getting people to vote. So apathy is something we need to discuss this morning: why people don't vote."[106] He expressed concern that voter apathy would lead to the loss of black elected officials.[107] The primary reason for this shortfall appears to be cynicism among black citizens and a loss of confidence in government and in the ability of officials to change their lives.

While some point to the historical condition of African Americans in Mississippi as affecting voter registration, Benjamin Griffith testified that the "extent to which there's a direct relationship between past official discrimination against African American citizens, the extent of that relationship as it compares to black electoral participation is getting more and more tenuous, more and more attenuated."[108] In a similar vein, Robert Sanders, assistant attorney general in Mississippi, stated:

> In every election . . . people are urged to [vote] . . . the media are flooded with requests to vote. In between elections all public officials that I know of are constantly going around and talking to high schools, even the junior highs, imploring kids to get interested in the process. It's simply at some point, it's a question of individual behavior, whether people want to vote or not . . . , there aren't barriers to registering.[109]

Witnesses testified about the correlation between electoral participation, and poverty and education. Mr. Griffith testified as to his belief that "education is absolutely the key, without which we'll make no progress in the Mississippi Delta. In electoral participation—minority access and mobilization—I think the two are directly related, and I think those also are directly related to poverty."[110] Similarly, Ms. Blackwell testified that "when you study the poverty, economics, the education, all of that hooks in together [with voting]. You've got to have [all] of it going together. If you don't have it all going together, you know, that's how we fall down on this side."[111]

Census figures demonstrate that voter participation increases dramatically with family income (see table 3.1). For example, among families with income between $5,000 and $9,999, the percentages who were registered and those who actually voted in November 1994 were 40.6 percent and 20 percent, respectively. Similarly, among those whose income was between $10,000 and $14,999, 51 percent were registered and 33 percent voted in November 1994. In contrast, among those with a family income of at least $50,000, 76.8 percent were registered and 60.1 percent actually voted. While 25.2 percent of

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[104] Ibid., pp. 695–97.

[105] *See, e.g.*, Blackwell Testimony, Hearing Transcript, pp. 688–89 ("I think that we have to take a look at . . . what is the situation in our country that makes us not appreciate this great right to vote").

[106] Luther Alexander Testimony, Hearing Transcript, pp. 702–03. Similarly, Unita Blackwell testified that the Commission should examine whether young people "[are] getting ready to vote, or are they getting to this climate that's in America that says . . . it's not going to solve anything or why should we go out and vote, and that kind of thing. And I think that we have to take a look at . . . what is the situation in our country that makes us not appreciate this great right to vote." Blackwell Testimony, Hearing Transcript, pp. 688–90.

[107] Alexander Testimony, Hearing Transcript, p. 705.

[108] Griffith Testimony, Hearing Transcript, p. 733. Interestingly, following ratification of the 19th Amendment in 1919 until World War II, when women began to enter the work force in unprecedented numbers, women registered and voted at a much lower rate than did men. Even until the 1980s, the rate for women still lagged behind that for men by at least 10 percentage points. Karen McGill Arrington, "The Struggle to Gain the Right to Vote: 1787–1965," in *Voting Rights in America*, eds. McGill Arrington and William L. Taylor (Washington, DC: Leadership Conference Education Fund and the Joint Center for Political and Economic Studies, Inc., 1992), pp. 32–33.

[109] Robert Sanders Testimony, Hearing Transcript, p. 810.

[110] Griffith Testimony, Hearing Transcript, p. 726. Griffith also noted, "We will not be mobilized and will not have participation and will not have that equal access and opportunity that the Voting Rights Act guarantees until we deal with the poverty question through education. I think they are inextricably related. Those are three things that I think you can't deal with singly or in isolation." Ibid., p. 728.

[111] Blackwell Testimony, Hearing Transcript, p. 722. *See also* Brenda Wright Testimony, Hearing Transcript, p. 809 ("Steps that need to be taken to ameliorate the still very significant differences between white and black citizens in terms of their access to jobs, to economic security, to a good education. Those things are all tied up with political participation").

Mississippi's population had income in 1989 below the poverty line, the percentage of the black population with income below the poverty line is much higher, at 46.4 percent.[112] In contrast, only 13.2 percent of the white population had income below the poverty level in 1989.[113]

TABLE 3.1

Voting and Family Income in the 1994 Election

	% registered	% voted
Under $5,000	40.6	20.0
$5,000–$9,000	43.2	23.5
$10,000–$14,999	51.0	33.0
$15,000–$24,999	58.0	40.4
$25,000-$34,999	63.1	44.9
$35,000–$49,999	68.1	50.1
$50,000 and over	76.8	60.1
Not reported	54.6	41.3

SOURCE: U.S. Department of Commerce, Bureau of the Census, "Characteristics of the Voting-Age Population Reported Having Registered or Voted: November 1994," <http://www.census.gov/population/socdemo/voting/profile/ptable>.

TABLE 3.2

Voting and Educational Attainment in the 1996 Election

	% registered	% voted
Less than high school	40.7	29.9
Some high school	47.9	33.8
High school graduate	62.2	49.1
Some college, including		
associate degree	72.9	60.5
bachelor's degree or higher	80.4	72.6

SOURCE: U.S. Department of Commerce, Bureau of the Census, "Voting and Registration: November 1996," table 23, <http://www.census.gov/population/socdemo/voting/history/vot23>.

Census figures also demonstrate a strong correlation between educational attainment and voter participation (see table 3.2). For example, in the November 1996 election, voter turnout among those with only some high school education was 33.8 percent, compared with a 72.6 percent turnout among persons with at least a bachelor's degree.

In Mississippi, there are discrepancies in educational attainment among blacks and whites. Among persons 18 to 24 years old, the percentage of whites with a high school degree or better is 78.1 percent; the percentage of blacks who have achieved at least a high school degree is 65.7 percent.[114] The discrepancy becomes wider among older persons. For example, 71.7 percent of whites and 47.3 percent of blacks who are 25 years old and over have at least a high school degree.[115] Among persons over 24 years old, the percentage of whites having a bachelor's degree is nearly twice that of blacks.[116] Among persons 25 to 34 years of age, the percentage of white and black males who have a bachelor's degree is 19.6 percent and 6.6 percent, respectively.[117] The percentage of white and black females who have a bachelor's degree is 19.9 percent and 10.3 percent, respectively.[118]

Brenda Wright offered another reason contributing to a lack of political participation: a decrease in grassroots organizing. She stated:

> There's so much attention on spending money and buying TV ads and so much less attention on grassroots and knocking on doors, even by the major political parties, calling up voters and finding out, you know, are you going to the polls. . . . I know some nationwide studies have looked at that as a possible cause of declining voter participation.[119]

Ellis Turnage offered the Commission some suggestions on increasing black political participation. He noted that hotly contested races draw minorities out to vote. Some come to the polls on election day because "they're too ashamed on election day to say I'm not registered, and they'll come down anyway and vote an affidavit ballot."[120] He suggested that Mississippi allow these people to register for the next election.[121] He also advocated that at-large districts be eliminated throughout Mississippi.[122] Finally, he suggested that the state provide money for "get out the vote" efforts.[123]

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[112] U.S. Department of Commerce, Bureau of the Census, *Social and Economic Characteristics: Mississippi*, 1990 Census of Population, No. CP-2-26, pp. 7, 34. In 1989, the average poverty threshold for a family of four persons was $12,674.

[113] Ibid., p. 31.

[114] *See* U.S. Department of Commerce, Bureau of the Census, *Social and Economic Characteristics: Mississippi*, 1990 Census of Population, No. CP-2-26, p. 76.

[115] Ibid.

[116] Ibid.

[117] Ibid.

[118] Ibid.

[119] Wright Testimony, Hearing Transcript, p. 810.

[120] Ellis Turnage Testimony, Hearing Transcript, p. 815.

[121] Ibid.

Remnants of the former dual registration system still affect some citizens. As noted earlier, Mississippi voters previously had to register for municipal elections with the municipal clerk after having registered at the office of the county register.[124] Because elimination of the dual system was not retroactive, persons who registered at the county before 1988 would still be unregistered for municipal elections.

Another issue affecting black voter registration is the disenfranchisement of African American voters because of felony convictions. As more young blacks are being put through the criminal justice system, they are losing the right to vote. A recent study by the National Sentencing Project reported that about 4.2 million voting-age Americans cannot vote because they are in prison, on parole, or have permanently lost the right to vote because of their convictions.[125] Of that number, about 1.4 million are black males, which means that one in seven otherwise eligible black males cannot vote.[126] In Mississippi, one who has been convicted of certain crimes as listed in the state's constitution may not vote even if he has already served his term.[127] In 1997, Representative John Conyers (D-MI) introduced legislation that would give former offenders who are otherwise qualified the right to vote in federal elections once they have been released from prison.[128]

African Americans running for office also encounter obstacles. Ms. Blackwell testified as to the importance of money in elections.[129] Black candidates in Mississippi are not as well financed as white candidates and have difficulty raising money.[130] White candidates often have the ability to hire poll watchers, a luxury few black candidates can afford. Robert Clark noted, "When I ran for Congress in '82 and '84, if we had gotten three more votes in each box throughout the district, we would have been the winner. But when we analyzed our votes we analyzed certain areas that had the same minority percentages, where we had poll watchers we won in those areas. And in similar areas where we did not have the poll watchers, we lost."[131]

Impact of Black Political Power in Mississippi

Although African Americans in Mississippi have achieved substantial electoral success, the ability to translate that success into economic gain and power has been less certain. According to Children's Defense Fund figures, more than half the state's black children lived below the poverty line in 1990.[132] Census figures also indicate that black per capita income was less than half that of whites in Mississippi.[133] With respect to the Mississippi Delta, 53 percent of its black residents live in poverty, compared with 13.1 percent for the nation as a whole.[134]

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[122] Ibid.

[123] Ibid., p. 816.

[124] Mississippi State Chapter, Operation PUSH v. Allain, 674 F. Supp. 1245, 1248–49 (N.D. Miss. 1987), *aff'd sub nom.*, Mississippi State Chapter, Operation PUSH v. Mabus, 932 F.2d 400 (5th Cir. 1991).

[125] Frank Green, "CURE Advised to Win Back Vote for Felons," *The Richmond Times Dispatch*, June 9, 1997, p. B3.

[126] Ibid.

[127] MISS. CONST. art. 12, § 241 (1998). *See also* MISS. CODE ANN. § 23-15-19 (1998). There have been resolutions introduced in the Mississippi Legislature to broaden the class of felons to be precluded from voting. *See* H.R. Con. Res. 6, 1998 Reg. Sess., 1998 M.S. H.C.R. 6 (1998). Mississippi had a history of selectively excluding certain felons from voting in an effort to disqualify blacks; in 1890, Mississippi replaced a constitutional provision disenfranchising citizens convicted of any crime with one barring only those convicted of certain petty crimes that blacks were supposedly more likely to commit than whites. *See* Ratliff v. Beale, 20 So. 865, 868 (Miss. 1896). *See also* Andrew L. Shapiro, "The Disenfranchised," *The American Prospect*, November–December 1997, p. 60. The Supreme Court unanimously struck down an Alabama constitutional provision with a similar history of racial discrimination. Hunter v. Underwood, 471 U.S. 222 (1985).

[128] H.R. 568, 105th Cong., 1st Sess. (1997). The bill was referred to the House Judiciary Committee in February 1997 and has had no further activity since that time.

[129] "Another thing that's here that we are talking about is that you have to be rich, rich, rich to become an elected official. That is not always the best elected official." Blackwell Testimony, Hearing Transcript, p. 689.

[130] Similarly, it appears that members of the Congressional Black Caucus raise significantly less money than the average House member. For example, during the 1991–1992 election cycle, the average caucus member raised $370,000, versus $543,000 for the average House member. David A. Bositis, *The Congressional Black Caucus in the 103rd Congress* (Washington, DC: Joint Center for Political and Economic Studies, 1994), p. 28.

[131] Clark Testimony, Hearing Transcript, pp. 713–14.

[132] Dittmer, *Local People*, p. 427.

[133] The per capita income for white persons was $12,183 as compared with $5,194 for black persons. U.S. Department of Commerce, Bureau of the Census, *Social and Economic Characteristics: Mississippi*, 1990 Census of Population, No. CP-2-26, p. 82.

Robert Clark testified that "the greatest deterrent to progress in the state of Mississippi is the lack of economic development."[135] He noted, "We have the black political power. We have the greatest number of black elected officials, but we have not transformed that into economic development."[136] Mr. Clark posited that the black members of the Legislature "have not successfully united to use our force the way we should. We're too hung up on individual personalities, rather than forgetting that and uniting for the cause."[137]

Ellis Turnage, an attorney from Cleveland, Mississippi, was even more critical in assessing the failure of black political representation in improving the quality of life for Mississippi's black citizens. In response to a question regarding whether any change has occurred, he replied, "Very little."[138] In following up, Mr. Turnage noted:

> If it was my . . . intention to increase the quality of life for voters or citizens in my political subdivision, if that was my goal or my aim, then you'd all be able to see evidence in the quality of life, improvements in housing, education, the likes. I see very little of that. . . . I listened to my fellow comrade from Cleveland, Mr. Griffin, talk eloquently about the progressiveness and how they had the first county administrator in Mississippi and all of the jobs that they have brought to Bolivar County and everything. . . . I haven't been able to see the same changes that he sees. . . .
>
> If . . . my stated objective and intent is to increase the economic attainment of black voters in this country, then you ought to be able to produce statistical evidence to document that. And I'm not seeing it.[139]

As noted above, the increase in black representation in Mississippi's Legislature has been accompanied by increased racial polarization in the Legislature. This polarization has hindered the effectiveness of black legislators. For example, State Representative Barney Scobey noted in 1993 that white lawmakers did not appoint blacks to key committee posts commensurate with their numbers and frustrated legislative initiatives introduced by blacks.[140] In contrast, the 1980s saw black legislators wielding considerable influence by allying themselves with moderate white Democrats. The efforts of the biracial coalition resulted in doubling state spending on education, tripling Medicare funding, adopting landlord-tenant reforms, and passing affirmative action legislation with respect to state contracts.[141]

Moreover, others point out some steps toward progress. When Unita Blackwell was elected mayor of Mayersville in Issaquena County, she had four sets of public housing built. It was the first time that the federal housing program had ever been in that county. Problems of water shortages and clean water access in the Delta have been addressed through increasingly effective federal representation, beginning with Mike Espy and continuing with Bennie Thompson. Their action has brought in federal grants and low interest loans for water projects and other programs that are trying to reach into these pockets of poverty and provide sewage control, sanitation, and infrastructure.[142] Further, as discussed in chapter 1, the Delta also is the location of an empowerment zone that residents hope will spawn greater economic development.

Some have pointed toward other noneconomic benefits to black political empowerment in Mississippi. Frank Parker noted that racial violence against blacks in Mississippi, while not eliminated, has dramatically declined since the increase in black voter registration after 1965.[143] Moreover, he noted that racial rhetoric in political campaigns has been curtailed.[144] Further, Parker also found that the influence of black voters, though not a statewide black majority, has changed the white state leadership.[145] In addition, Robert Clark noted that the attitude of the Legislature has become more considerate toward black members and to black Mississippians since the increase in black political representation.[146]

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[134] Bositis, *The Congressional Black Caucus*, p. 26.

[135] Clark Testimony, Hearing Transcript, p. 681.

[136] Ibid., p. 710.

[137] Ibid., pp. 707–08.

[138] Turnage Testimony, Hearing Transcript, p. 788.

[139] Ibid., pp. 788–90.

[140] National Public Radio, "Black Caucus Unable to Get Bills in Mississippi Passed," Morning Edition, Apr. 30, 1993.

[141] Ibid. Others believe that Mississippi's black legislators have made the Legislature more responsive to black needs in the enactment of legislation for educational reform, the establishment of state-financed kindergartens for the first time in the history of the state, improvements in the state education financing system, the enactment of salary increases for public schoolteachers, improvements in the provision of health care under Medicaid, and the blocking of an increase in the state sales tax. Parker, *Black Votes Count*, p. 134.

[142] Reed Branson, "Black Son of Delta Carried Hopes to High Places," *The Commercial Appeal*, Aug. 28, 1997, p. A13. *See also* Sheryl Stolberg, "New Housing for Poor Sprouts from Cotton Field; No More Rats or Leaking Roofs," *The Record*, Feb. 3, 1997, p. A19.

[143] Parker, *Black Votes Count*, pp. 199–200.

NATIONAL VOTER REGISTRATION ACT

In 1993, Congress passed the National Voter Registration Act[147] (NVRA), commonly known as the motor voter law, which requires states to make registration more accessible through motor vehicle administrations, welfare and disability agencies, libraries, the U.S. mail, military recruitment offices, and other outlets. A report by Human SERVE, a nonprofit lobby for voter registration reform, estimates that a record 11.2 million Americans registered to vote in 1995, a greater number than at any time since voter registration practice was established in the late 19th century.[148] The *Christian Science Monitor* reported that between the 1994 midterm elections and October 1996, more than 22 million Americans had registered or reregistered to vote under the motor voter law.[149] In Mississippi, an estimated 10,000 citizens registered under the law.[150] According to Brenda Wright, Mississippi had one of the lowest percentages of NVRA transactions relative to its voting-age population from January 1995 through June 1996, the first 18 months of the NVRA's operation, than any other state.[151]

Prior to the implementation of the motor voter law, Mississippi had a unified system for voter registration in which a person was eligible to vote in any election, whether federal, state, or local, upon registering to vote.[152] The unified system included voter registration by mail, availability of state voter registration forms at drivers' license offices, and fairly uniform local voter registration procedures.[153] Mississippi had implemented the unified system following federal court decisions that the previous dual registration requirement violated section 2 of the Voting Rights Act because it had resulted in a "denial or abridgment of the right of black citizens in Mississippi to vote and participate in the electoral process."[154]

Upon first implementing the motor voter law, Mississippi continued to maintain the unified system for those registering to vote in both federal and state elections for those voters registering pursuant to the state's pre-existing procedures.[155] Those voters registering at motor vehicle or other locations pursuant to the motor voter law, however, are allowed to vote only for federal offices. Those who wished to vote for state and local offices have to register under the state's pre-existing procedures. Mississippi is the only state in the nation with separate registration procedures for federal and state elections for those registering under the NVRA.[156] Unita Blackwell spoke of her 1965 appearance before the U.S. Commission on Civil Rights: "At that particular time I came to talk about that I could not register to vote, and I am here today with that same concern about registering to vote."[157]

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[144] Ibid., pp. 200–201. Parker argued that racial campaigning continued to exist, however. For example, in a 1982 congressional race against Robert Clark, who is black, Webb Franklin appealed to white voters with the slogan, "He's One of Us." A Franklin television ad had the following voice-over narrative: "'You know, there's something about Mississippi that outsiders will never, ever understand. The way we feel about our family and God, and the traditions that we have. There is a new Mississippi, a Mississippi of new jobs and new opportunity for all our citizens [video pan of black factory workers]. We welcome the new, but we must never, ever forget what has gone before [video pan of Confederate monuments]. We cannot forget a heritage that has been sacred through our generations.'" Ibid., p. 201. Webb Franklin won the race. In addition, a district court found proof of racial appeals by white candidates in two 1986 elections. Indeed, the racial appeals in one race "were overt and contained no subtlety." Martin v. Allain, 658 F. Supp. 1183, 1195 (S.D. Miss. 1987). *See also* Jerry Himelstein, "Rhetorical Continuities in the Politics of Race: The Closed Society Revisited," *The Southern Speech Communication Journal*, vol. 48 (Winter 1983), p. 153.

[145] Parker, *Black Votes Count*, pp. 201–02.

[146] Clark Testimony, Hearing Transcript, p. 707. *See also* Parker, *Black Votes Count*, p. 202.

[147] 42 U.S.C. §§ 1973gg–1973gg-10 (1995).

[148] "Record Numbers Register Under 'Motor Voter' Law," *The Washington Post*, Mar. 27, 1996, p. A16. According to the report, 5.7 million registered or updated their registration while conducting motor vehicle business and 1.3 million registered or updated at public-assistance agencies.

[149] James L. Tyson, "Motor Voter Law Yields Results, Some Reproach," *Christian Science Monitor*, Oct. 11, 1996, p. 3.

[150] "Mississippi, Clinton Administration Spar Before High Court on Motor Voter Law," *The Commercial Appeal*, Jan. 7, 1997, p. A5.

[151] Wright Testimony, Hearing Transcript, p. 776.

[152] Complaint at para. 16, United States v. State of Mississippi, Civ. Action No. 3:95CV197 (S.D. Miss. 1995).

[153] Letter from Isabelle Katz Pinzler, acting assistant attorney general, U.S. Department of Justice, to Sandra M. Shelson, special assistant attorney general, State of Mississippi (Sept. 22, 1997), p. 3 (hereafter cited as DOJ Objection Letter).

[154] Mississippi State Chapter, Operation PUSH v. Allain, 674 F. Supp. 1245, 1253 (N.D. Miss. 1987), *aff'd sub nom.*, Mississippi State Chapter, Operation PUSH v. Mabus, 932 F.2d 400 (5th Cir. 1991).

[155] "Mississippi, Clinton Administration Spar Before High Court on Motor Voter Law," *The Commercial Appeal*, Jan. 7, 1997, p. A5.

Four Mississippians challenged the legitimacy of the two registration systems, alleging that the confusion engendered by separate registration systems may result in discrimination against black voters.[158] Specifically, they argued that Mississippi should be required to preclear its dual registration system with the Justice Department.[159] Brenda Wright, attorney for the plaintiffs in *Young v. Fordice*, testified at the Commission's hearing that:

> Congress enacted the NVRA in an effort to make voter registration easier and more convenient. . . . We filed the . . . lawsuit in 1995, because Mississippi has chosen to implement the NVRA in a manner that creates burdens and obstacles to voter participation, where none should exist. Mississippi alone, among all other states that have implemented the NVRA, allows NVRA registrants to vote only in federal elections, and it requires them to register again separately under different procedures to be eligible for state and local elections. This takes Mississippi back to the days of dual registration requirements, the type of requirement that was found to be racially discriminatory in a federal court decision as recently as 1987.[160]

In its response to the lawsuit, Mississippi countered that it had no duty to submit its system for Justice Department approval because it never underwent the kind of change requiring preclearance under the Voting Rights Act of 1965. In its answer to the petitioner's complaint, Mississippi stated it was "merely administering its existing, and precleared, state election system, while, at the same time, administering the requirements for federal elections as imposed upon it by the federal government."[161]

Brenda Wright told the Commission that Mississippi's refusal to implement a unified registration system under the NVRA must be viewed in the historical context of the prior dual registration requirement. As noted above, until 1987, Mississippi maintained a dual registration system for municipal and state elections; citizens who wished to vote in municipal elections had to first register with the circuit clerk of the county and then register separately with the municipal court. In 1987, a district court ruled that "Mississippi's statutory dual registration requirement. . . . [was] adopted for a racially discriminatory purpose."[162]

Ellis Turnage testified that he had examined the rolls of voters registered in Bolivar County under the NVRA. Based on his personal knowledge and experience as legal counsel to the Bolivar County Board of Election Commission, Mr. Turnage testified, "I can tell you or represent to you that the people who are using motor voter in my county are overwhelmingly black."[163] The Department of Justice, in its preclearance objection letter, stated that "it appears likely that a majority of the applicants for voter registration under the NVRA in Mississippi are black."[164]

Shortly after the Commission's hearing, the Supreme Court handed down its decision in *Young v. Fordice*. The District Court for the Southern District of Mississippi had ruled that Mississippi's maintenance of dual registration rolls for federal and state elections, in contrast to its previous unitary system, is a creation of the federal government through the National Voter Registration Act.[165] Because it was not the state's creation, the district court ruled it did not require preclearance under section 5.[166] The Court reversed the district court's decision and held that Mississippi must preclear the dual system that was put into place in an effort to satisfy the NVRA.[167] The Court noted the confusion resulting from the separate registration systems "probably would have led [NVRA registrants] . . . to believe that NVRA registration permitted them to vote in all elections" and "might well mislead if they cannot in fact be used to register for state elections."[168] In fact, the Justice Department noted that there appeared to be widespread agreement among election officials in Mississippi that NVRA voters were significantly confused about their inability to vote in state and local elections under the separate registration system.[169]

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[156] Richard Carelli, "High Court Hears Mississippi's Voter System," *The Rocky Mountain News*, Jan. 7, 1997, p. 26A. Until fall 1996, Illinois also did not allow those voters registering through motor voter locations to vote in state and local offices. "Voters Not Beating Path to Polls, Say Officials," *The St. Louis Post-Dispatch*, Nov. 1, 1996, p. A2.

[157] Blackwell Testimony, Hearing Transcript, p. 683.

[158] Young v. Fordice, Civ. Action No. 3:95CV197 (S.D. Miss. 1995).

[159] *Id.*

[160] Wright Testimony, Hearing Transcript, pp. 774–75.

[161] Answer at para. 56, Young v. Fordice, Civ. Action No. 3:95CV197 (S.D. Miss. 1995).

[162] Mississippi State Chapter Operation PUSH v. Allain, 674 F. Supp. 1245, 1252 (N.D. Miss. 1987), *aff'd sub nom.*, Mississippi State Chapter, Operation PUSH v. Mabus, 932 F.2d 400 (5th Cir. 1991).

[163] Turnage Testimony, Hearing Transcript, p. 785.

[164] DOJ Objection Letter, p. 3. DOJ based its conclusion on statistics indicating that a majority of the applications for voter registration in Mississippi have come from public assistance offices and other statistics indicating that participants in Mississippi's public assistance programs are predominantly black.

[165] *See* 65 U.S.L.W. 3023.

Luther Alexander testified that the chairman of the election committee in Mississippi's Senate refused to pass the motor voter bill (allowing for registration of state, local, and federal elections under the NVRA) because:

> it is tied up in court. And historically when something has been in court, historically we have not taken it up. . . . [H]e is saying if we pass the bill, then Mississippi is going to be liable for paying the fees of the lawyers that file the suit. And that's his reason, but it shouldn't ever have had to go to court.[170]

Mr. Sanders voiced another concern with respect to implementing the NVRA in Mississippi. He noted that once Mississippi allowed NVRA registrants to vote in state and local elections, the NVRA would become the benchmark for voting in Mississippi. He presented a scenario in which Congress decided to change the NVRA to provide for same day registration:

> If the individuals in the Mississippi Legislature were to say . . . we want to decouple from the NVRA . . . because we just don't like the direction that the Congress has gone . . . we'd have to pass legislation and submit that decoupling legislation to the attorney general for preclearance and I doubt very seriously that we would ever get preclearance, and I doubt that we would be successful in a declaratory judgment action with the district court.
>
> The effect of being unable to decouple would simply be in the view of many people . . . to cede authority or control of Mississippi registration law to the Congress, and that is a step that many people in the Legislature are very hesitant to take. And that is a fundamental concern because we think obviously voting is a core right and any political unit's authority to control the registration of voters is also a core function of state government . . .[171]

The Secretary of State's Office reported that 78 of the 82 circuit clerks in Mississippi indicated they wanted the state to pass a motor voter law.[172] Moreover, Mississippi incurs "roughly a half million dollar cost per election year . . . for keeping separate books and for putting forth the efforts required to maintain the voting place in the proper way."[173]

In September 1997, the Justice Department determined that Mississippi's separate registration system discriminated against black voters and refused preclearance under section 5 of the Voting Rights Act.[174] Among other things, DOJ noted that public assistance clients were given the opportunity to vote solely through the NVRA forms, which only register voters for federal elections.[175] The majority of these clients are black.[176] In contrast, the drivers' license offices of the Mississippi Department of Public Safety are offered a choice between state forms and NVRA forms; many voters choose the state forms.[177] According to statistics reported by the state, it appears that persons who obtain drivers' licenses and picture identification cards at drivers' license offices in Mississippi are predominantly white.[178] DOJ noted, "The state has administered this new dual registration requirement in such a way that discriminatory effects on black voters were not just foreseeable but almost certain to follow."[179]

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[166] *Id.*

[167] Young v. Fordice, 520 U.S. 273 (1997).

[168] *Id.* at 1237.

[169] DOJ Objection Letter, p. 4.

[170] Alexander Testimony, Hearing Transcript, p. 708.

[171] Sanders Testimony, Hearing Transcript, pp. 803–04.

[172] *See, e.g.*, Gina Holland, "Miss. Circuit Clerks Are Told of Potholes in Motor Voter Law," *The Commercial Appeal*, Sept. 27, 1997.

[173] Sanders Testimony, Hearing Transcript, p. 801.

[174] DOJ Objection Letter.

[175] Ibid., p. 3.

[176] Ibid., pp. 3–4.

[177] Ibid., p. 4. Early in 1995, the drivers' license offices had abandoned using the state's mail-in voter registration forms they had offered prior to implementation of the NVRA and instead offered only the NVRA forms. It appears, however, that after voters registered under the NVRA were not allowed to vote in state elections, the drivers' license offices, unlike the public assistance offices, resumed distributing state forms.

The Mississippi Senate passed a bill in January 1998 which provides that those registered through the NVRA will be registered for state and local elections as well.[180] The House Apportionment and Elections Committee, voting to reject amendments by the chairman that would have required Mississippi voters to present identification upon voting, sent the Senate bill to the full House.[181] In his State of the State Address, Governor Kirk Fordice promised to veto motor voter legislation that did not require all citizens to provide identification at the polls.[182] In the same address, he called the NVRA "an unwarranted federal intrusion" into "one of the most open voter registration processes in the country" and said that it opened the door to fraud.[183] Governor Fordice reportedly has also, called the NVRA the "welfare-voter."[184]

Governor Fordice fulfilled his promise to veto motor voter legislation without provisions for identification at the polls. In late February 1998, Governor Fordice vetoed a motor voter bill sent to him by the Legislature that did not include voter identification requirements.[185] Some black Mississippians are reportedly against such a measure because they remember obstacles erected by the state to keep them from voting in the past. Responding to charges of racism, Governor Fordice stated, "Vote fraud is an equal-opportunity election stealer. It is certainly not, by any stretch of the imagination, a black issue or a white issue."[186] He angered many lawmakers who opposed voter identification by saying, "It took me a while to come to that realization. Those who oppose us on this, many of them are here because of voter fraud."[187]

The plaintiffs who had opposed the separate registration system returned to court to request that the court impose a remedy similar to the legislation that had been vetoed by the governor.[188] The U.S. District Court for the Southern District of Mississippi issued an order in *Young v. Fordice* on October 5, 1998, enjoining the state of Mississippi from denying the right to vote in any state, county, or municipal election to any voter who is registered and qualified to vote in federal elections under the NVRA. On April 18, 2000, Mississippi ended its history of resistance to the motor voter law when recently elected Governor Ronnie Musgrove approved House bill 763, which adopted the provisions of the NVRA.

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[178] Ibid.

[179] DOJ Objection Letter, p. 5.

[180] S.B. 2115, 1998 Leg., 113th Reg. Sess. (Miss. 1998).

[181] Reed Branson, "Motor Voter Bill Keeps on Rolling," *The Commercial Appeal*, Jan. 30, 1998, p. A15.

[182] Reed Branson, "Fordice Condemns Motor-Voter Bill, Promising a Veto," *The Commercial Appeal*, Jan. 15, 1998, p. A8.

[183] Ibid.

[184] Branson, "Motor Voter Bill Keeps on Rolling," p. A15. The Justice Department noted that several proposals aimed at mitigating the discriminatory effects of the separate registration systems have been rejected by state officials for "reasons [that] . . . have been insubstantial, and in some cases have been couched in racially charged terms indicating antipathy toward "welfare voters." DOJ Objection Letter, p. 5.

[185] Reed Branson, "Motor-Voter Supporters Vow Return to Court if Veto Stands," *The Commercial Appeal*, Feb. 26, 1998, p. A13.

[186] Reed Branson, "Fordice Uses Veto Against Motor-Voter," *The Commercial Appeal*, Feb. 25, 1998, p. A6.

[187] Reed Branson, "Lawmakers Demand Apology From Fordice; Incensed at 'Fraud' Remark on Voter ID Plan," *The Commercial Appeal*, Mar. 20, 1998, p. B1.

[188] Branson, "Motor-Voter Supporters Vow Return to Court if Veto Stands," p. A13.

CHAPTER 4

Findings and Recommendations

The Commission's hearing in the Mississippi Delta addressed three main topics with respect to racial and ethnic tensions: the Delta's unique racial history and its impact on the region's economy and prospects for future economic development; Mississippi's history of a racially separate public education system and the current state of equality of opportunity in higher education as well as in the state's elementary and secondary schools; and voting rights and political representation. This report has summarized the hearing record and has incorporated additional research on each of these major topics. Based on the hearing testimony and additional staff research, the Commission has developed the following findings and recommendations.

CHAPTER 1. EQUALITY OF ECONOMIC OPPORTUNITY

Race and the Economy of the Delta

Finding: Significant racial disparities exist in the socioeconomic conditions of black and white Delta residents, with black residents having markedly higher rates of unemployment and poverty, lower incomes, and more substandard housing. These disparities are largely the result of the region's legacy of slavery, the sharecropping system, Jim Crow Laws, and discrimination against blacks in many areas of life, including employment, lending practices, and housing. All Delta residents, especially black residents, require immediate improvement in their economic conditions, i.e., increased job opportunities and greater access to capital for business development and to secure decent, affordable housing, and health care services.

Recommendation: New businesses in the Delta that receive tax incentives under the region's designation as an empowerment zone or that receive any other financial benefit based on federal legislation should be required to establish equal employment opportunity policies, including grievance procedures. Businesses should be required to maintain detailed EEO statistics, including employment in job categories by race, and report this information annually to appropriate federal entities, e.g., the U.S. Equal Employment Opportunity Commission or the U.S. Department of Labor. In addition, lending institutions in nonmetropolitan areas should be required to report the number of mortgage applications originated, granted, and denied by race of household head, as is required by lending institutions in metropolitan areas under the Home Mortgage Disclosure Act. Finally, the current federal prohibition against borrowing money for a down payment to purchase a home should be eliminated. This proposal could result in better quality housing for impoverished Delta residents and lead to asset building for poor residents.

Finding: In recent years, the Delta has experienced an increase in the number of new jobs, resulting in greater employment opportunities for some residents. The most significant increase in jobs has occurred as a result of Mississippi's establishment of dockside gaming in 1991. Additional jobs have been created in other industries, including catfish farming and manufacturing. However, in a region of the country with a history of significant occupational segregation by race, the Mississippi Gaming Commission has no equal employment regulations or reporting requirements. In addition, because of insufficient data regarding equality of employment opportunities in other new businesses in the region, it cannot be ascertained whether occupational segregation is occurring in the new industries, resulting in blacks being employed in disproportionate numbers at lower paying jobs, or whether they are securing employment in all job categories.

Recommendation: Because the Mississippi Gaming Commission has no equal employment reporting requirements, it is not possible to ascertain whether black applicants and employees have an equal opportunity with respect to hiring, promotions, and conditions of employment. Accordingly, it is recommended that the industry be required to establish an equal employment policy, including a grievance procedure. In addition, the Mississippi Gaming Commission should be required to maintain detailed EEO statistics, including employment in job categories and salaries by race.

Finding: Despite the recent influx of new businesses to the Delta and the introduction of legalized gaming, the most recent statistics indicate that the region still leads the nation in most indices of poverty, including unemployment and substandard housing. Long-term improvement in the economic lives of impoverished Delta residents will require not only traditional approaches to eliminate poverty—such as creating new jobs, more job training, granting tax incentives to corporations, and government/private sector cooperative initiatives—but also the use of asset-building strategies for the poor—such as educational and business savings accounts, increased homeownership, and greater opportunities for self-employment.

Recommendation: Individual Investment Accounts should be funded with federal money allocated to match individual savings for down payments for home purchases, start-up capital for small businesses, and postsecondary education. The accounts should not result in any reduction in welfare, Social Security, pension, or other transfer payments or tax consequences to individual program participants.

Economic Opportunity, Agriculture, and Black Delta Farmers

Rural Development Initiatives

Finding: Black and small farmers often depend on the resources of university land grant programs and cooperative extension services, to improve and develop their farm plans and to obtain greater access to farm loans and agricultural expertise. Historically, white land grant universities have received greater resources than historically black institutions in the South. As a result, this inequity has hindered black farmers' access to technical support and financial assistance.

Recommendation: The USDA should initiate or continue efforts to appropriately fund and support cooperative extension programs on both historically white and black universities, particularly for those colleges that primarily serve minority and small farmers. Outreach efforts should also be established and intensified to ensure that black farmers have routine access to these services.

Lending Difficulties, Loan Debt, and Discriminatory Treatment at Local FSA Offices

Finding: African American farmers have repeatedly indicated that they face inequitable treatment from local lending institutions and county Farm Service Agency (FSA) offices when seeking financial assistance. As a result, black farmers often experience difficulties in securing farm loans in a timely fashion, unnecessary loan debt, and ultimately farm foreclosure. In addition, the USDA has documented that there is a lack of a racially diverse staff in local farm offices. These factors only serve to escalate the rapid loss of black-owned farms in the Mississippi Delta.

Recommendation: The USDA should thoroughly investigate and resolve outstanding complaints of discriminatory treatment at local FSA offices. Moreover, the Department should also work with other governmental entities to examine lending practices at area banks in rural areas to determine, document, and alleviate discriminatory lending practices, as well as institutional barriers that contribute to lengthy loan approval methods. The Department should also seek input from minority and nonminority farmers when designing methods to facilitate the lending process. Further, the USDA should examine legislative initiatives that contribute to farm foreclosure and prevent farmers from reducing their farm loan debt. New legislation should facilitate continued farm operation and ownership. County FSA offices should also encourage and initiate active participation from African American, female, and other minority and small farmers and staff on local farm boards and in FSA offices. Where necessary and appropriate, targeted debt relief programs should be available to farmers in cases involving proven discriminatory lending practices.

Lack of Enforcement of Civil Rights Laws

Finding: Though several USDA institutional mechanisms exist that can address civil rights issues, African American farmers have had to obtain legal redress to seek enforcement of federal civil rights laws for discriminatory treatment from the Department. Black farmers often wait years to receive an acknowledgment from the USDA of their complaint. As a result, many complaints are unresolved. The farmers' efforts to obtain legal action has only exacerbated the decreasing number of black-owned farms, due to the passage of time and the lack of farm services. Farmers also contend that local FSA offices often do not enforce the decisions of their USDA appeals.

Recommendation: The USDA should resolve the backlog of civil rights complaints through the most expedient, equitable, and efficient mechanisms. Efforts should be made to investigate those institutional factors that created the backlog of complaints, and the Department should eliminate these conditions as soon as possible. Civil rights investigation and enforcement staff should also be appropriately trained to address these complaints. In addition, minority, female, and small farm owners should be encouraged to become members of local farm boards, which often review area farmers' complaints of discrimination.

CHAPTER 2. RACE AND THE PUBLIC EDUCATION SYSTEM IN MISSISSIPPI

Elementary and Secondary Education

Finding: When school districts in Mississippi are evaluated using a performance-based accreditation system, nearly half of the lowest ranking districts are located in the Delta and its periphery. In 1998, in an effort to bring about greater equity in school funding, the State Legislature passed the Mississippi Adequate Education Program. This legislation, which will continue to be phased in over a six-year period, will target an additional $130 million annually to education needs and will provide an increase of at least 8 percent for education services in every district throughout the state.

Recommendation: The impact of this legislation should be evaluated to ensure that the objective of increased funding equity is being met.

Finding: There was testimony at the hearing to indicate that "tracking" of students within schools, as well as the related policy of dividing students into different "ability groups," still occurs despite testimony to the contrary by representatives of the public school system.

Recommendation: The determination of whether such policies help or hinder students in the learning process is beyond the scope of this review. However, at the very least, the State Department of Education should determine the extent to which tracking and ability grouping are taking place. Moreover, the information should be made known to the public so that parents and outside experts can lobby for policy changes if they deem such changes to be appropriate.

Finding: An agreement has been signed between the state of Mississippi and the Office for Civil Rights within the U.S. Department of Education to address the problem of overrepresentation of minority students in special education classes. Significant statistical disparities have been found in the percentage of African American students being placed into Mississippi special education programs.

Recommendation: Appropriate monitoring and evaluation must take place to ensure that the provisions of the agreement are being followed, with adequate avenues available for participation and input from teachers, parents, and other concerned parties.

Finding: There was testimony at the hearing to suggest that placements into the alternative school programs treated children unfairly. Parents also questioned the alternative school programs. Testimony suggested that alternative schools were being used as "dumping grounds" for black male middle school students and that the school system was not concentrating on making them into high-quality programs.

Recommendation: Teachers should receive competent training in classroom management and conflict resolution. Alternative schools should be a last resort in removing disruptive students from the regular school setting and not unless and until fair and nondiscriminatory policies and procedures are followed prior to suspensions and expulsions. These students must not simply be separated—they must also be taught basic skills that are crucial even for entry-level jobs. The state must design curricula, train teachers and staff, and fully fund alternative programs toward that end.

Finding: The State Legislature should scrutinize the current system of electing district school superintendents rather than having individuals appointed to the position. There was testimony at the hearing to suggest that electing people to these positions might unnecessarily limit the pool of talent from which the official is selected. It is very difficult to bring in "new blood" when the person must already reside in the immediate district—which is the case if the position remains an elected one. There was testimony to suggest that while the practice of keeping the position an elected one is waning throughout the country, nearly half of Mississippi's 149 school district superintendents—or 63 of them—remain elected.

Recommendation: While there has been resistance to alter the status quo, state legislators should undertake a closer examination of the issue to determine whether students could be more efficiently and effectively served if superintendents of schools were appointed to their positions.

Finding: Volunteer efforts such as "Net Day" have encouraged local businesses to donate time and resources in helping to wire Mississippi schools for computer use.[1]

Recommendation: Because it is crucial for all students to be able to travel the new "information superhighway," the State Legislature should work to assist the schools in becoming "wired" for computers, for the Internet, and for the future.

Finding: Teacher shortages exist throughout Mississippi. Many of the state's poorest school districts, with the highest concentrations of students of color, are the ones grappling with the most severe teacher shortages. Especially troubling has been the precipitous decline in the number of teachers of color, as well as the number applying for teacher certification. The teacher shortage was one of the most serious and troubling issues that arose during the Mississippi Delta hearing. Following are several recommendations that the state should take into consideration as it grapples with the matter:

Recommendations:

- *Teacher salaries.* In 1997, the state's average teacher salary was over $5,000 less than the Southeastern average and almost $11,000 less than the national average.[2] When the Public Education Forum of Mississippi convened a task force in 1998 to examine factors contributing to public school educators leaving the profession, the highest ranking factor was "inadequate salary."[3] In 1997, the State Legislature did approve a three-year initiative to raise teacher salaries 10 percent—yet even these increases fail to make the state average competitive with those in other states.[4] Testimony at the hearing strongly suggests that an increase in teacher salary is a crucial component of any plan to reduce teacher shortages.
- *Teacher retirement.* It is important for the state to present options that would encourage quality teachers and administrators to return to the Mississippi public schools following retirement. (Currently, many retirees will start teaching at a private school, or will cross state lines to start a second teaching career in another state while drawing full retirement benefits from the state of Mississippi.)[5] Nineteen other states offer such programs, and they have been able to do so in a manner that immediately increases the supply of quality teachers and administrators, yet has not negatively affected the actuarial soundness of the states' retirement systems.[6] Mississippi should consider implementing a similar plan as part of an overall strategy to address the teacher shortage.
- *Pupil-to-teacher ratio.* There was testimony at the hearing that a high pupil-to-teacher ratio, especially when there is a wide divergence of talent in the classroom, can lead to discipline problems and other stress factors that can contribute to a teacher's decision to leave the classroom.[7] Testimony indicated that reading levels within a single class of 30

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[1] U.S. Commission on Civil Rights, hearing, Greenville, MS, Mar. 6–8, 1997, transcript, pp. 193, 195 (hereafter cited as Hearing Transcript).

[2] Public Education Forum of Mississippi, *Quality Teachers, Every Child's Educational Birthright*, Jackson, MS, November 1998, p. 10 (hereafter cited as *Quality Teachers*).

[3] Ibid., p. 9.

[4] Ibid., p. 10.

[5] Hearing Transcript, p. 105.

[6] *Quality Teachers*, p. 11.

[7] Hearing Transcript, pp. 102–03, 106.

students could range from fifth grade to college readiness.[8] The federal government is taking this issue seriously, including implementing the 1998 Class Size Reduction Initiative.[9] Mississippi's allocation from the $1.2 billion targeted nationwide, approximately $19 million, will enable the state to employ an estimated 494 new teachers.[10] However, there must be adequate state and local support, including financial support, if the goal of a lower pupil-to-teacher ratio is going to be met.

- *Funding for aspiring teachers.* In recent years, the State Legislature has substantially increased funding of scholarships, grants, and loans for aspiring and practicing teachers. These programs include the Critical Needs Teacher Loan/Scholarship Program, which funds four years of college (tuition, housing, meals, books, and fees) for students who commit to teaching in a critical need area of the state for three years; the William Winter Teacher Scholar Loan Program, which provides loans to individuals interested in becoming teachers; and the University Assisted Teacher Recruitment and Retention Grant, which provides tuition, fees, and books for individuals teaching in a critical shortage area of Mississippi. Testimony at the hearing suggested that such programs have been urgently needed.[11] It is hoped the continued popularity and success of these programs will lead to an increase in funding levels, as well as an expansion of similar loan and grant opportunities.
- *"Master teacher" program.* There was testimony at the hearing on the importance of implementing a "master teacher" program that would provide mentoring to new teachers.[12] Each new teacher would be assigned an experienced "master teacher" for one year, who could nurture the new teacher's growth and advancement as an educational leader in the school.[13] National statistics strongly illustrate the need for providing a support system that addresses the developmental needs of beginning teachers: it has been estimated that 25 percent of beginning teachers do not teach more than two years, and that nearly 40 percent leave the profession within their first five years.[14] The Mississippi Critical Teacher Shortage Act authorized the Mississippi Teacher Center to implement an induction program for beginning teachers.[15] This critical program aims to promote the "personal, social, physical, psychological, emotional and professional welfare of beginning teachers."[16] It is very important that teachers be surveyed periodically to see if the new program eases the transition into the profession.
- *Teacher certification process.* It is crucial that the teacher certification process in the state not act to overly restrict a person's ability to enter the profession—especially those who wish to switch to teaching from another profession.[17] While the state must ensure that preparation and competency standards remain high for individuals who wish to be admitted into the ranks of teaching, there must also be flexibility so that good potential teachers are not turned away due to unreasonable licensing rules and requirements. As one Mississippi educator said, "Redesign the requirements for teacher certification in a way that matches requirements with the skills required for success in today's classroom."[18] The current teacher shortage adds a sense of urgency to this recommendation.

Higher Education in Mississippi

U.S. v. Fordice

Finding: The racial identifiability of Mississippi's eight public universities persists: in the fall of 1996, the on-campus undergraduate enrollment ranged between 75 percent and 85 percent white at each of the state's historically white institutions, and averaged nearly 98 percent black at each of the state's historically black institutions.

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[8] Ibid., p. 114.

[9] *Quality Teachers*, p. 12.

[10] Ibid.

[11] Hearing Transcript, pp. 124, 196.

[12] Ibid., p. 142.

[13] Ibid.

[14] *Quality Teachers*, p. 14.

[15] Ibid.

[16] Ibid.

[17] *See* Hearing Transcript, p. 127.

[18] Ibid.

Even though the courts have directed the state to spend millions of dollars to improve its historically black public universities (which will lead to the creation of new graduate programs, new scholarship programs to attract "other-race" students, etc.), it might take time—possibly years—for these schools to bolster their academic reputations to the extent required to attract substantially greater percentages of white students.

Recommendation: In the interim, additional means should be used to bring about increased participation in higher education as well as increased desegregation. This might include creating additional university "satellite centers," which can be opened in different parts of the state in order to enable residents to attend college while working full time. Well-planned programs that respond to the particular needs and interests of local populations can assist in desegregation efforts. Specifically, programs that are not duplicated at proximate institutions, which are targeted to local demands, and which are offered through alternative delivery systems (such as off-campus, evening, and weekend programs) have had success in attracting white students to historically black institutions.

Finding: Since the state adopted new admissions standards by equalizing admissions requirements at its eight four-year institutions, a smaller proportion of black high school graduates have qualified for unconditional admission. The first year after the new standards were introduced, black representation of first-time, full-time freshmen fell from 43 percent to 38 percent across the state's eight public four-year institutions. And while the court-approved summer remedial programs might play a role in preparing young people for the rigors of higher education, it is highly unlikely that such programs will be able to wipe away the educational deficits that a young person can build up while attending years of substandard public schools.

Recommendation: There was a consensus at the hearing that improvements in the state's K–12 system are necessary in order to give *all* students—black and white—a chance to compete for a college or university slot under the now-uniform entrance criteria. However, there are real questions in the Mississippi Delta about whether public schools currently offer curriculum of sufficient quality to meet the higher standards. It is hoped the newly passed Mississippi Adequate Education Program—which states that every school district must receive "sufficient" funds to provide an adequate education—will lead to improvements enabling students from all socioeconomic backgrounds to effectively compete for entrance to higher education. However, if that program fails to achieve the desired outcome, the State Legislature should institute other measures to improve the K–12 system.

Also, the summer remedial program is still in its infancy, and perhaps it should be reviewed to make sure that it does not unnecessarily stigmatize participating students. (Of course, if any stigmatization is found, the solution would be minor adjustments to, rather than the wholesale elimination of, the important summer program.)

Finally, there is evidence that the numbers of young people opting to participate in the summer remedial program are small. Hearing testimony suggested that some students will not participate in the summer program because doing so requires forgoing a summer job. Perhaps the state could investigate the possibility of providing more scholarship resources to the summer program, especially to needy students for whom participation in that one 10-week program might mean the difference between attending and not attending college at all.

The Appeal of U.S. v. Fordice

Finding: On January 20, 1998, the U.S. Supreme Court, without comment, declined to review the latest *Fordice* opinion of the Fifth Circuit Court of Appeals. It was argued in the failed appeal that the state is continuing to segregate students and to discriminate by discouraging blacks from attending college.

Recommendation: Whatever one thinks of the *Fordice* case or the judicial process through which it traveled, it appears that the court system is mostly finished with the matter, except for ongoing status conferences being conducted by the district court as it attempts to carry out the orders of the reviewing courts. This might be an indication to both the State Legislature and the College Board that if any other changes, major or minor, are going to come about in this matter, then they will most likely emanate from one of these two bodies. Perhaps establishing a way for representatives of these two groups to work together, with input from concerned citizens and education experts from throughout the state, could result in suggestions and compromise solutions that have not been achieved heretofore through the long and combative litigation process.

Hopwood or Fordice: Which Controls?

Finding: It will be helpful when the law becomes more settled in the area of higher education desegregation. There is still confusion over when—and in what forms—affirmative action is a permissible remedy in higher education desegregation cases. This matter is especially important given that the *Hopwood v. the State of Texas*[19] court appeared to disregard certain principles put forth by the U.S. Supreme Court in *Regents of the University of California v. Bakke.*[20] Until clarification is provided, there will continue to be "mixed signals" and disagreements as to the state of the law.

Community Colleges

Finding: Currently, the focus of the state community college system is on "transition" programs, which entail responding to the needs of industry as people are "re-tooled" for the higher technology jobs of a changing workplace. The programs concentrate on skills acquisition in order to increase a person's immediate marketability and employability. It is projected that 80 percent of all new jobs will require education beyond the high school level, so community colleges in Mississippi will continue to play a useful role in imparting needed skills and knowledge to people seeking those jobs. Moreover, community colleges help increase access to and desegregation within the state's higher education system because they are more flexible, more affordable, and oftentimes more "user-friendly" in helping nontraditional students—including older students and/or students whose families and cultural values typically do not send them to college—to access higher education.

Recommendation: The state must not forget that a small percentage of community college students—usually less than 5 percent each year—use the colleges as an "academic bridge" to transfer to a four-year institution. This is a small but vital role that should not be overlooked when the state is funding scholarship and other programs that help these students make the transition to four-year institutions.

Race Relations and Desegregation

Finding: While there are many people, black and white, who are working toward desegregation and integration of the state public university system, testimony suggested that there are nonetheless people at both historically white and historically black institutions of higher education who oppose meaningful integration.

Finding: There is a perception among black leaders in the education arena that oftentimes in desegregation cases the burden of integration falls upon the historically black institutions. Indeed, a longstanding paradox of the desegregation movement in higher education is the possibility that historically black colleges and universities—the very institutions that provided opportunities for blacks during times of segregation—might be sacrificed in the name of desegregation.

Recommendation: As decisions are made by the courts and the College Board in this ongoing matter, it is very important that neither the people associated with historically black institutions nor the people associated with historically white institutions feel that they are being made to accept more than their fair share of the burdens involved (i.e., school closings, etc.) in bringing about desegregation and integration.

Finding: Important social interaction between blacks and whites is clearly taking place at greater levels in the Mississippi Delta, especially in business and civic activities. However, there were some indications put forth at the hearing to suggest that race relations continue to be tenuous. This also applies to the state's institutions of higher education.

Recommendation: All the state's institutions of higher education must provide a campus and classroom environment where students of all races feel welcome and comfortable. Highly commendable are the actions taken by some of the higher education institutions, including the University of Mississippi, to review certain Confederate symbolism that some members of the university community find offensive. It is important to keep the dialogue and lines of communication open between different groups and communities as relationships continue to build and strengthen over time.

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[19] 999 F. Supp. at 872; 1998 U.S. Dist. LEXIS 5339, Mar. 20, 1998.

[20] 438 U.S. 265 (1978).

CHAPTER 3. VOTING RIGHTS AND POLITICAL REPRESENTATION IN THE MISSISSIPPI DELTA

The Census Undercount

Finding: The Census Bureau has determined that the 1990 census resulted in a national undercount of 2.1 percent, or approximately 5.3 million persons out of a total population of approximately 255 million. The undercount was greater for members of racial and ethnic minorities. Hispanics were undercounted by 5.2 percent, African Americans by 4.8 percent, and Asian and Pacific Islanders by 3.1 percent. The U.S. Supreme Court ruled in *Department of Commerce v. United States,* 525 U.S. 316 (1999), that the Census Act prohibits the use of statistical sampling to determine population for congressional apportionment purposes. The decision is likely to ensure the repeated undercounting of poor people of color in the Mississippi Delta. This undercounting will have an adverse impact on people of color communities and their participation in the political process.

Recommendation: The Commerce Department, and specifically its Census Bureau, must assess its efforts to target historically undercounted communities for the 2000 decennial census in order to verify whether these efforts produced a more accurate count of these communities compared with previous census counts. The Census Act should be amended to remedy the persistent and prevalent practice of undercounting identifiable groups of individuals during the decennial census count by recognizing the legitimacy and usefulness of statistical sampling for apportionment as well as nonapportionment purposes.

History of Voting Rights in Mississippi

Finding: Minority political participation in Mississippi has increased substantially since passage of the Voting Rights Act. Voter registration rates for African Americans changed dramatically following passage of the Voting Rights Act, with the black registration rate in Mississippi rising to 59.8 percent of eligible voters by 1967. Just three years before, only 6.7 percent of eligible blacks were registered to vote in Mississippi.

The number of black elected officials in Mississippi began to rise gradually throughout the 1980s and into the 1990s. Many majority-black counties in the Mississippi Delta, which had no or only one black supervisor until the late 1980s, began to elect black representatives. Similar increases occurred with respect to black representation in municipal elected offices. Whereas in 1965 most cities and towns in Mississippi elected city council and board of aldermen members through at-large elections, by 1988 most had converted to ward or single-member district plans. As a result, the number of black elected officials on municipal governing bodies rose substantially throughout the 1980s, nearly doubling between 1984 and 1993. By the mid-1990s Mississippi had more black elected officials than any other state.

Litigation filed in 1991 resulted in reapportionment of the State Legislature after which the number of black representatives doubled. Before redistricting the State Legislature was 11 percent black in a state with a black voting-age population of 31.6 percent. By the time of the Commission's hearing in March 1997, the State Legislature was 25.9 percent black, with 10 black senators, up from two, and 35 black representatives, up from 21.

Current Political Representation in Mississippi

Finding: Some reports indicate that with the dramatic increase in black representation in the Mississippi Legislature, there has been racial polarization among the members of the Legislature. There also appears to be racial polarization among the electorate. While there is some evidence that white crossover voting for black candidates exists, racial polarization of voters is more common. Blacks tend to vote for black candidates and whites for white candidates in most black versus white elections. Thus, the increase in the number of black elected officials in Mississippi can be attributed primarily to the creation of majority-black districts.

Barriers to Black Political Participation

Finding: Black voter registration and voting still lag behind that of white citizens. While some witnesses contended that there are no barriers to black political participation in Mississippi, others testified about the correlation between electoral participation, and poverty and education. Census figures demonstrate that voter participation increases dramatically with family income. Census figures also demonstrate a strong correlation between educational attainment and voter participation. In Mississippi, there are significant discrepancies in both poverty levels and educational attainment between blacks and whites.

Recommendation: Economic development and educational opportunities for black citizens in Mississippi need to be strengthened and emphasized.

Recommendation: Potential voters who are unregistered should be allowed to register on election days at the polling site for the next election cycle.

Recommendation: Efforts to increase voting turnout should be encouraged.

Finding: Another issue affecting black voter registration is the disenfranchisement of African American voters because of felony convictions. As more young blacks are being put through the criminal justice system, they are losing the right to vote. A recent study by the National Sentencing Project reported that about 4.2 million voting-age Americans cannot vote because they are in prison, on parole, or have permanently lost the right to vote because of their convictions. Of that number, about 1.4 million are black males. As a result, one in seven otherwise eligible black males cannot vote. In Mississippi, one who has been convicted of certain crimes as listed in the state's constitution may not vote even if he has already served his term.

Recommendation: Congress should pass legislation to allow former offenders who are otherwise qualified the right to vote in federal elections once they have served their sentence and have been released from prison. Similarly, the Mississippi Legislature should amend the state constitution to allow otherwise qualified former offenders the right to vote in state and local elections.

Impact of Black Political Power in Mississippi

Finding: Although African Americans in Mississippi have achieved substantial electoral success, the ability to translate that success into economic gain and power has been less certain. According to Children's Defense Fund figures, more than half the state's black children lived below the poverty line in 1990. Black per capita income was less than half that of whites in Mississippi in 1990; the gap in per capita income, while improving somewhat between 1970 and 1980, remained nearly constant between 1980 and 1990. While the percentage of black Mississippians living below the poverty line has improved from 1970, it remained nearly the same between 1980 and 1990. In the Mississippi Delta, 53 percent of its black residents live in poverty, compared with 13.1 percent for the nation as a whole.

Finding: There have been steps toward economic progress. When she was elected the first black mayor in Mayersville, Unita Blackwell oversaw the construction of four sets of public housing, which was the first time that federal housing had been built in Issaquena County. Problems of water shortages and clean water access in the Delta have been addressed through increasingly effective federal representation. Further, the Delta also is the location of an empowerment zone that residents hope will spawn greater economic development.

Finding: There have also been noneconomic benefits to black political empowerment. Racial violence against blacks in Mississippi, while not eliminated, has dramatically declined since the increase in black voter registration after 1965. Although it continues, racial rhetoric in political campaigns has been curtailed. The Mississippi Legislature appears more considerate toward black members and to black Mississippians since the increase in black political representation.

Recommendation: Elected officials must place a greater emphasis on remedying the stark economic inequalities between blacks and whites in Mississippi.

National Voter Registration Act

Finding: Mississippi had one of the lowest percentages of National Voter Registration Act (NVRA) transactions relative to its voting-age population from January 1995 through June 1996, the first 18 months of the NVRA's operation, than any other state. An estimated 10,000 citizens registered under the law in Mississippi as of January 1997.

Finding: Prior to the implementation of the motor voter law, Mississippi had a unified system for voter registration in which a person was eligible to vote in any election—whether federal, state, or local—upon registering to vote. The unified system included voter registration by mail, availability of state voter registration forms at drivers' license offices, and fairly uniform local voter registration procedures. Mississippi had implemented the unified system following federal court decisions that the previous dual registration requirement violated section 2 of the Voting Rights Act because it had resulted in a "denial or abridgment of the right of black citizens in Mississippi to vote and participate in the electoral process."

Finding: Mississippi is the only state in the nation with separate registration procedures for federal and state elections for those registering under the NVRA. Those voters registering at motor vehicle or other locations pursuant to the NVRA are allowed to vote only for federal offices. Those who wish to vote for state and local offices have to register additionally under the state's pre-existing procedures. Mississippi continues to maintain the unified system for those voters registering pursuant to the state's pre-existing procedures.

Finding: Mississippi did not preclear its implementation of the NVRA with the Department of Justice pursuant to section 5 of the Voting Rights Act. In *Young v. Fordice*, the Supreme Court held that Mississippi must preclear its implementation of the NVRA with the Department of Justice. Accordingly, Mississippi submitted its plan to the Department of Justice. In September 1997, the Justice Department determined that Mississippi's separate registration system discriminated against black voters and refused preclearance under section 5 of the Voting Rights Act.

Finding: The Mississippi Legislature sent a bill to the governor which provided that those registered through the NVRA would be registered for state and local elections as well. In his State of the State Address, Governor Kirk Fordice promised to veto motor voter legislation that did not require all citizens to provide identification at the polls. In late February 1998, Governor Fordice vetoed the NVRA bill sent to him by the Legislature that did not include voter identification requirements.

Finding: On April 18, 2000, Mississippi ended its history of resistance to the motor voter law when recently elected Governor Ronnie Musgrove approved House bill 763, which adopted the provisions of the NVRA.

Recommendation: Mississippi should fully implement and monitor a unified system of registration for federal, state, and local elections under the NVRA before the next election.

Appendix A

Mississippi Delta County Supervisors

		Number of black supervisors								
County	**% black in 1990**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**	**1991**	**1993**
Bolivar	63	1	1	1	1	1	1	1	1	1
Coahoma	65	1	1	1	1	0	1	1	1	1
Holmes	76	3	3	3	3	2	3	3	3	3
Humphreys	68	1	2	3	3	3	1	3	3	3
Issaquena	56	1	1	1	1	1	2	2	2	2
Leflore	61	1	1	1	3	0	1	1	1	3
Quitman	59	0	0	1	1	1	2	2	2	2
Sharkey	66	0	0	0	0	0	2	1	1	2
Sunflower	64	0	0	0	0	1	1	1	1	2
Tallahatchie	58	0	0	0	0	0	0	0	0	0
Tunica	75	1	1	1	1	1	2	2	2	2
Washington	58	0	0	0	0	0	1	1	1	2
Yazoo	53	1	1	1	2	1	2	2	2	2

SOURCE: Joint Center for Political and Economic Studies, *Black Elected Officials: A National Roster, 1984–1993.*

Appendix B

Black Elected Officials on Municipal Governing Bodies in Mississippi

1974	61
1979	143
1984	163
1985	162
1986	200
1987	206
1988	222
1989	282
1990	294
1991	303
1993	302

SOURCE: Frank Parker, *Black Votes Count* (Chapel Hill, NC: University of North Carolina Press, 1990); Joint Center for Political and Economic Studies, *Black Elected Officials: A National Roster, 1984–1993*

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